

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1993**

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SENATE BILL 278

Short Title: GPAC/Labor Recs.

(Public)

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Sponsors: Senator Martin of Guilford.

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Referred to: Government Performance Audit.

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February 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT  
2 PERFORMANCE AUDIT COMMITTEE TO TRANSFER TO THE  
3 DEPARTMENT OF LABOR MAJOR WORKER TRAINING PROGRAMS AND  
4 OTHER LABOR-RELATED FUNCTIONS CURRENTLY ESTABLISHED IN  
5 OTHER STATE DEPARTMENTS OR AGENCIES.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Notwithstanding any other law or Executive Order, the  
9 Employment Security Commission of North Carolina is hereby transferred to the  
10 Department of Labor by a Type II transfer, as defined in G.S. 143A-6(b). Under this  
11 transfer, the Commission shall have the authority to employ, direct, and supervise  
12 professional and technical personnel, and shall not be accountable to the Commissioner  
13 of Labor in its exercise of quasi-judicial powers authorized by statute.

14 Sec. 2. G.S. 96-4(a) reads as rewritten:

15 "(a) Duties and Powers of Commission. – It shall be the duty of the Commission  
16 to administer this Chapter. The Commission shall meet at least once in each 60 days  
17 and may hold special meetings at any time at the call of the chairman or any three  
18 members of the Commission, and the Commission shall have power and authority to  
19 adopt, amend, or rescind such rules and regulations, to employ such persons, make such  
20 expenditures, require such reports, make such investigations, and take such other action  
21 as it deems necessary or suitable in the administration of this Chapter. Such rules and  
22 regulations shall be effective upon publication in the manner, not inconsistent with the  
23 provisions of this Chapter, which the Commission shall prescribe. The Commission  
24 shall determine its own organization and methods of procedure in accordance with the

1 provisions of this Chapter, and shall have an official seal which shall be judicially  
2 noticed. The chairman of said Commission shall, except as otherwise provided by the  
3 Commission, be vested with all authority of the Commission, including the authority to  
4 conduct hearings and make decisions and determinations, when the Commission is not  
5 in session and shall execute all orders, rules and regulations established by said  
6 Commission. Not later than November 20 preceding the meeting of the General  
7 Assembly, the Commission shall submit to the Governor and to the Commissioner of  
8 Labor a report covering the administration and operation of this Chapter during the  
9 preceding biennium, and shall make such recommendation for amendments to this  
10 Chapter as the Commission deems proper. Such report shall include a balance sheet of  
11 the moneys in the fund in which there shall be provided, if possible, a reserve against  
12 the liability in future years to pay benefits in excess of the then current contributions,  
13 which reserve shall be set up by the Commission in accordance with accepted actuarial  
14 principles on the basis of statistics of employment, business activity, and other relevant  
15 factors for the longest possible period. Whenever the Commission believes that a  
16 change in contribution or benefit rates will become necessary to protect the solvency of  
17 the fund, it shall promptly so inform the ~~Governor~~ Governor, the Commissioner of  
18 Labor, and the legislature, and shall make recommendations to the Governor with  
19 respect thereto."

20 Sec. 3. G.S. 96-5(b) reads as rewritten:

21 "(b) Replacement of Funds Lost or Improperly Expended. – If any moneys  
22 received from the Secretary of Labor under Title III of the Social Security Act, or any  
23 unencumbered balances in the Employment Security Administration Fund or any  
24 moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or  
25 any moneys made available by this State or its political subdivisions and matched by  
26 such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act,  
27 are found by the Secretary of Labor, because of any action or contingency, to have been  
28 lost or expended for purposes other than, or in amounts in excess of those found  
29 necessary by the Secretary of Labor for the proper administration of this Chapter, it is  
30 the policy of this State that such moneys, not available from the Special Employment  
31 Security Administration Fund established by subsection (c) of this section, shall be  
32 replaced by moneys appropriated for such purpose from the general funds of this State  
33 to the Employment Security Administration Fund for expenditure as provided in  
34 subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary  
35 of Labor, the Commission shall promptly pay from the Special Employment Security  
36 Administration Fund such sum if available in such fund; if not available, it shall  
37 promptly report the amount required for such replacement to the Commissioner of  
38 Labor and the Governor and the Governor shall, at the earliest opportunity, submit to  
39 the legislature a request for the appropriation of such amount."

40 Sec. 4. G.S. 96-19(b) reads as rewritten:

41 "(b) The Employment Security Commission may, upon receiving notification  
42 from the U.S. Department of Labor that any provision of this Chapter is out of  
43 conformity with the requirements of the federal law or of the U.S. Department of Labor,  
44 suspend the enforcement of the contested section or provision until the North Carolina

1 Legislature next has an opportunity to make changes in the North Carolina law. The  
2 Employment Security Commission shall, in order to implement the above suspension:

- 3 (1) Notify the Commissioner of Labor and the Governor's office and  
4 provide ~~that office~~ the Commissioner and the Governor with a copy of  
5 the determination or notification of the U.S. Department of Labor;
- 6 (2) Advise the Governor's ~~office~~ office, and inform the Commissioner of  
7 Labor, as to whether the contested portion or provision of the law  
8 would, if not enforced, so seriously hamper the operations of the  
9 agency as to make it advisable that a special session of the legislature  
10 be called;
- 11 (3) Take all reasonable steps available to obtain a reprieve from the  
12 implementation of any federal conformity failure sanctions until the  
13 State legislature has been afforded an opportunity to consider the  
14 existing conflict."

15 Sec. 5. G.S. 143B-428 reads as rewritten:

16 "**§ 143B-428. Department of ~~Economic and Community Development~~Commerce –**  
17 **declaration of policy.**

18 It is hereby declared to be the policy of the State of North Carolina to actively  
19 encourage the expansion of existing environmentally sound North Carolina industry; to  
20 actively encourage the recruitment of environmentally sound national and international  
21 industry into North Carolina through industrial recruitment efforts and through effective  
22 advertising, with an emphasis on high-wage-paying industry; ~~to promote the development~~  
23 ~~of North Carolina's labor force to meet the State's growing industrial needs; to cooperate with~~  
24 other State agencies in promoting the development of North Carolina's labor force to  
25 address the State's growing industrial needs; to promote the growth and development of  
26 our travel and tourist industries; to promote the development of our State ports; to  
27 promote the management of North Carolina's energy resources and the development of a  
28 State energy policy; and to assure throughout State government, the coordination of  
29 North Carolina's economic development efforts."

30 Sec. 6. G.S. 143B-431(a) reads as rewritten:

31 "(a) The functions of the Department of Commerce, except as otherwise expressly  
32 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall  
33 include:

- 34 (1) All of the executive functions of the State in relation to economic  
35 development including by way of enumeration and not of limitation,  
36 the expansion and recruitment of environmentally sound industry,  
37 ~~labor force development~~, the promotion of and assistance in the orderly  
38 development of North Carolina counties and communities, the  
39 promotion and growth of the travel and tourism industries, the  
40 development of our State's ports, energy resource management and  
41 energy policy development;
- 42 (2) All functions, powers, duties and obligations heretofore vested in an  
43 agency enumerated in Article 15 of Chapter 143A, to wit:  
44 a. The State Board of Alcoholic Control,

- b. The North Carolina Utilities Commission,
- ~~e. The Employment Security Commission,~~
- d. The North Carolina Industrial Commission,
- e. State Banking Commission and the Commissioner of Banks,
- f. Savings and Loan Association Division,
- g. The State Savings Institutions Commission,
- h. Credit Union Commission,
- i. The North Carolina Milk Commission,
- j. The North Carolina Mutual Burial Association Commission,
- k. The North Carolina Rural Electrification Authority,
- l. The North Carolina State Ports Authority, all of which enumerated agencies are hereby expressly transferred by a Type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

- (3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. Any agency transferred to the Department of Commerce by a Type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article."

Sec. 7. Notwithstanding any other law or Executive Order, the Employment and Training Division of the Department of Commerce is hereby transferred to the Department of Labor by a Type I transfer, as defined in G.S. 143A-6(a); however, under this transfer, the Governor shall retain authority over JTPA activities of the Division to the extent that such authority is required by Public Law 97-300, the Job Training Partnership Act.

Sec. 8. G.S. 143B-432 reads as rewritten:

**"§ 143B-432. Transfers to Department of Commerce.**

(a) The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6.

(b) All functions, powers, duties, and obligations heretofore vested in the following subunits of the Department of Natural Resources and Community Development are hereby transferred to and vested in the Department of Commerce by a Type I transfer as defined in G.S. 143A-6:

1 (1) Community Assistance Division.

2 ~~(2) Employment and Training Division.~~

3 (c) All functions, powers, duties, and obligations heretofore vested in the  
4 following councils of the Department of Natural Resources and Community  
5 Development are hereby transferred to and vested in the Department of Commerce by a  
6 Type II transfer as defined in G.S. 143A-6:

7 (1) Community Development Council.

8 ~~(2) Job Training Coordinating Council."~~

9 Sec. 9. G.S. 143B-433 reads as rewritten:

10 **"§ 143B-433. Department of Commerce – organization.**

11 The Department of Commerce shall be organized to include:

12 (a) (1) The North Carolina Alcoholic Beverage Control  
13 Commission,

14 (2) The North Carolina Utilities Commission,

15 ~~(3) The Employment Security Commission,~~

16 (4) The North Carolina Industrial Commission,

17 (5) State Banking Commission,

18 (6) Savings and Loan Association Division,

19 (7) The State Savings Institutions Commission,

20 (8) Credit Union Commission,

21 (9) The North Carolina Milk Commission,

22 (10) The North Carolina Mutual Burial Association Commission,

23 (11) North Carolina Cemetery Commission,

24 (12) The North Carolina Rural Electrification Authority,

25 (13) Repealed by Session Laws 1985, c. 757, s. 179(d),

26 (14) North Carolina Science and Technology Research Center,

27 (15) The North Carolina State Ports Authority,

28 (16) North Carolina National Park, Parkway and Forests Development  
29 Council,

30 (17) Economic Development Board,

31 ~~(18) Labor Force Development Council,~~

32 (19) Energy Policy Council,

33 (20) Energy Division,

34 (21) Navigation and Pilotage Commissions established by Chapter 76 of  
35 the General Statutes,

36 (22) The North Carolina Technological Development Authority.

37 (b) Those agencies which are transferred to the Department of Commerce,  
38 including the:

39 (1) Community Assistance Division,

40 (2) Community Development ~~Council~~, Council; and

41 ~~(3) Employment and Training Division, and~~

42 ~~(4) Job Training Coordinating Council; and~~

43 (c) Such divisions as may be established pursuant to Article 1 of this Chapter."

1           Sec. 10. Notwithstanding any other law or Executive Order, Part 3A of  
2 Article 10 of Chapter 143B is recodified as Article 23 of Chapter 95 of the General  
3 Statutes and the sections of Part 3A are renumbered as follows:

4	5	6	7	8	9	10	11	12
	Old Section Numbers			New Section Numbers				
	143B-438.1			95-260				
	143B-438.2			95-261				
	143B-438.3			95-262				
	143B-438.4			95-263				
	143B-438.5			95-264				
	143B-438.6			95-265.				

13           Sec. 11. G.S. 95-263, as recodified by Section 10 of this act, reads as  
14 rewritten:

15       "~~§ 143B-(a)~~     ~~The Notwithstanding any other law or Executive Order, the State~~  
16 ~~Job Training Coordinating Council is established within the Department of Commerce.~~  
17 ~~transferred from the Department of Commerce to the Department of Labor. This~~  
18 ~~transfer shall have all the elements of a Type II transfer, as defined in G.S. 143A-6(b);~~  
19 ~~however, under this transfer the Governor shall retain authority over the Council to the~~  
20 ~~extent that such authority is required by Public Law 97-300, the Job Training~~  
21 ~~Partnership Act.~~

22           (b) Operating funds and staff for the Council shall be supported with funds  
23 from the Job Training Partnership Act.

24           (c) Adequate office space shall be provided by the Department of ~~Commer~~  
25 ~~ce.~~ Labor.

26           (d) The ~~initial~~ staffing level of the Council and the level of funding support  
27 required shall be determined by the ~~Secretary of Commerce.~~ Commissioner of Labor.  
28 However, the staffing level shall not exceed 10 personnel as may be necessary to carry  
29 out its functions under this ~~Part~~ Article and the Job Training Partnership Act.

30           (e) Duties and responsibilities of the Council include but shall not be limited to the  
31 following:

- 32           (1) Overseeing the meeting of the State's goals for employment and  
33 training.
- 34           (2) Reviewing the plans and programs of agencies operating federally  
35 funded programs related to employment and training and of other  
36 agencies providing employment and training-related services in the  
37 State that may be funded with State funds.
- 38           (3) Conducting studies, preparing reports and analyses, including an  
39 annual published report to the Commissioner of Labor, Governor and  
40 General Assembly, and providing such advisory services as may be  
41 authorized or directed by the Governor.
- 42           (4) Recommending the allocation of Job Training Partnership Act funds  
43 not subject to the seventy-eight percent (78%) that flows directly to  
44 service delivery areas.

- 1 (5) Recommending program goals to insure job training for unskilled  
2 youth and adults is a matter of the highest priority and encouraging  
3 Service Delivery Areas (SDA's) to reflect these goals in their SDA  
4 plans.
- 5 (6) Developing a long term tracking system to measure the effectiveness  
6 of the Job Training Partnership Act with respect to permanent job  
7 placements.
- 8 (7) Insuring compliance with the provisions of Sections 122(b)(7) A and B  
9 and 122(b)(8) of the Job Training Partnership Act no later than May 30  
10 of every year, requiring the following:
- 11 a. The identification of, in coordination with the appropriate State  
12 agencies, the employment, training, and vocation education  
13 needs throughout the State;
- 14 b. An assessment of the extent to which employment and training,  
15 vocation education, rehabilitation services, public assistance,  
16 economic development, and other federal, State, and local  
17 programs and services represent a consistent, integrated, and  
18 coordinated approach to meeting these needs;
- 19 c. Comments on reports required by Sections 105(d)(3) of the  
20 Vocational Education Act of 1963 and appropriate  
21 recommendations to the Governor and General Assembly.
- 22 (8) Annually measuring, to the extent practicable, the increase in  
23 employment and earnings and the reductions in welfare dependency by  
24 SDA resulting from participating in the Job Training Partnership Act  
25 program and reporting those findings to the Commissioner of Labor,  
26 Governor and General Assembly.
- 27 (9) Annually reporting to the Commissioner of Labor, Governor and  
28 General Assembly on funds expended by each SDA for job training  
29 services.
- 30 (10) Providing management guidance and review of all State administered  
31 employment and training programs and encouraging compliance by  
32 the SDA's with the goals and purposes outlined by the General  
33 Assembly, the Governor, and the State Council.
- 34 (11) Repealed by Session Laws 1989, c. 532, s. 2.
- 35 (12) Obtaining other information from recipients of Job Training  
36 Partnership Act funds, as requested by the Commissioner of Labor,  
37 ~~Governor~~ by the Governor, and by the General Assembly.
- 38 (13) Overseeing the responsibilities required in the Economic Dislocation  
39 and Worker Adjustment Assistance Act (EDWAAA), including the  
40 following:
- 41 a. Advising the Governor on designation of sub-State areas and  
42 sub-State grantees and on the procedure for selecting Private  
43 Industry Council (PIC) and Local Employment Organizations

- 1 (LEO) representatives within sub-State areas relative to grantee  
2 designation;
- 3 b. Advising the Governor on developing formulas for distributing  
4 funds among sub-State areas and formulas for reallocating  
5 unexpended funds;
- 6 c. Reviewing and commenting to the Commissioner of Labor and  
7 the Governor on State and sub-State EDWAAA programs;
- 8 d. Reviewing and submitting comments on the State plan prior to  
9 submission to the Secretary and on each sub-State plan; and
- 10 e. Advising the Governor on the establishment and application of  
11 performance standard.
- 12 (f) The State Job Training Coordinating Council:
- 13 (1) Shall be appointed by the Governor in a manner consistent with  
14 Section 122 of Public Law 97-300.
- 15 (2) Shall meet at the call of the chairman. A majority of the Council shall  
16 constitute a quorum for the transaction of business. Members shall  
17 receive per diem and necessary travel and subsistence expenses in  
18 accordance with the provisions of G.S. 138-5, 138-6 or 120-3.1, as the  
19 case may be.
- 20 (3) Repealed by Session Laws 1989, c. 532, s. 2.
- 21 (4) May create such committees as may be necessary to the proper  
22 conduct of its business. The Governor may establish such additional  
23 advisory bodies, in accordance with existing law, related to  
24 employment and training as may be necessary and appropriate to the  
25 conduct of federally supported employment and training-related  
26 programs.
- 27 (5) Keep the Commissioner of Labor apprised of all activities,  
28 recommendations, and advice provided by the Council to the Governor  
29 and the General Assembly."

30 Sec. 12. G.S. 95-265, as recodified by Section 10 of this act, reads as  
31 rewritten:

32 "**§ 143B-438.6-95-265. Employment and Training Grant Program.**

33 (a) There is established in the Department of ~~Commerce, Labor, Employment and~~  
34 Training Division, an Employment and Training Grant Program. The purpose of the  
35 program is to make grants available to local agencies operating on behalf of the Private  
36 Industry Council serving Job Training Partnership Act service delivery areas. Grant  
37 funds shall be allocated for the purpose of enabling recipient agencies to implement  
38 local employment and training programs in accordance with existing resources, local  
39 needs, local goals, and selected training occupations. The Department shall adopt rules  
40 in accordance with Chapter 150B of the General Statutes for administering the  
41 Employment and Training Grant Program, which rules shall include procedures for  
42 review and approval of grant applications by local agencies and for monitoring use of  
43 grant funds by recipient agencies. A State-administered program of performance  
44 standards shall be used to measure grant program outcomes.



1 (b) Use of grant funds: Local agencies may use funds received under this section  
2 only for the purpose of upgrading the foundation of basic skills of the adult population  
3 and the existing work force in North Carolina. Services that may be provided include  
4 participant programs currently available under the federal Job Training Partnership Act  
5 that are appropriate for adults; on-the-job training; work experience; adult basic  
6 education; skills training, upgrading, and retraining; counseling and screening for job  
7 placement; service corps; and related support services. Local agencies may use grant  
8 funds to provide services only to individuals who are 18 years of age or older and who  
9 either (i) meet the current Federal Job Training Partnership Act definition of  
10 'economically disadvantaged', or (ii) meet the current definition for eligibility under  
11 Title III of the Federal Job Training Partnership Act.

12 (c) Allocation of grants: The Department may reserve and allocate up to five  
13 percent (5%) of funds available to the Employment and Training Grant Program for  
14 State and local administrative costs to implement the program. The Division of  
15 Employment and Training shall allocate employment and training grants to local  
16 agencies operating on behalf of the Private Industry Council serving Job Training  
17 Partnership Act service delivery areas based on the following formula:

- 18 (1) One half of the funds shall be allocated on the basis of the relative  
19 excess number of unemployed individuals residing in each county as  
20 compared to the total excess number of unemployed individuals in all  
21 counties in the State.

22 'Excess number of unemployed' is defined as the number of  
23 unemployed individuals in excess of four and one-half percent (4.5%)  
24 of the civilian labor force in each county or the number of unemployed  
25 individuals in excess of four and one-half percent (4.5%) of the  
26 civilian labor force in each census tract within the county. The  
27 following methodology is used to determine the excess number of  
28 unemployed:

- 29 a. For counties classified as having excess unemployment, the  
30 excess number of unemployed is determined by subtracting four  
31 and one-half percent (4.5%) of the civilian labor force from the  
32 number of unemployed individuals within the county. The  
33 difference equals the number of excess unemployed.
- 34 b. In situations where the entire county is not classified as having  
35 excess unemployment, the excess number of unemployed is  
36 determined by census tract unemployment within the county.  
37 Census tract data is used to determine which subcounty areas  
38 qualify as areas of excess unemployment. In those subcounty  
39 areas classified as having excess unemployment (census tracts  
40 with four and one-half percent (4.5%) or higher unemployment  
41 rates), four and one-half percent (4.5%) of the census tract labor  
42 force is subtracted from the number of unemployed individuals  
43 within the area of excess unemployment. The subcounty  
44 figures of excess number of unemployed within the county are

1                                   then added together to determine the total excess number of  
2                                   unemployed within the county.

3           (2)   One half of the funds shall be allocated on the basis of the relative  
4                   number of economically disadvantaged individuals within each county  
5                   compared to the total number of economically disadvantaged  
6                   individuals in the State. To determine the number of economically  
7                   disadvantaged individuals within each county, data from the State Data  
8                   Center in the Office of State Budget and Management, or from the  
9                   federal decennial census, whichever is most recent, shall be used.

10       (d)   Reports, Coordination: The Department of ~~Commerce~~Labor shall report  
11       quarterly to the Governor and to the Speaker of the House of Representatives and the  
12       President Pro Tempore of the Senate on the North Carolina Employment and Training  
13       Grant Program. The Department shall also provide a copy of these quarterly reports to  
14       the State Job Training Coordinating Council. The Council shall advise the Department  
15       on the merger of the funds provided to implement this section with other employment  
16       and training funds to develop comprehensive work-force preparedness initiatives for the  
17       State.

18       (e)   Funds appropriated to the ~~Department of Commerce~~ for the Employment and  
19       Training Grant Program that are not expended at the end of the fiscal year shall not  
20       revert but shall remain available to the Department for the purposes established in this  
21       section."

22                   Sec. 13. All statutory authority, powers, duties, functions, records, personnel,  
23       property, and unexpended balances of appropriations or other funds of any agency  
24       which is transferred pursuant to this act shall be transferred in their entirety.

25                   Sec. 14. This act shall not be construed to obligate the General Assembly to  
26       make any appropriation to implement the provisions of this act. Each department and  
27       agency to which this act applies shall implement the provisions of this act from funds  
28       otherwise appropriated to that department or agency.

29                   Sec. 15. This act becomes effective July 1, 1993.