

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-276  
SENATE BILL 622**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

**PART I. INTRODUCTION AND TITLE OF ACT**

**INTRODUCTION**

**SECTION 1.1.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the Executive Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

**TITLE OF ACT**

**SECTION 1.2.** This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2005."

**PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

**CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the biennium ending June 30, 2007, according to the following schedule:

<b>Current Operations – General Fund</b>	<b>2005-2006</b>	<b>2006-2007</b>
<b>EDUCATION</b>		
Community Colleges System Office	\$ 787,685,943	\$ 767,295,886
Department of Public Instruction	6,607,998,945	6,579,807,097

University of North Carolina - Board of Governors		
Appalachian State University	97,708,514	98,114,232
East Carolina University		
Academic Affairs	165,132,181	168,098,010
Health Affairs	45,624,110	45,671,394
Elizabeth City State University	28,376,210	28,173,367
Fayetteville State University	42,540,261	42,778,425
North Carolina Agricultural and Technical State University	76,497,695	76,533,207
North Carolina Central University	59,223,437	58,883,106
North Carolina School of the Arts	21,173,905	20,698,614
North Carolina State University		
Academic Affairs	299,773,341	304,775,818
Agricultural Extension	36,389,142	35,668,328
Agricultural Research	45,200,460	45,281,347
University of North Carolina at Asheville	29,211,816	29,705,695
University of North Carolina at Chapel Hill		
Academic Affairs	212,164,735	220,475,219
Health Affairs	162,938,570	164,709,561
Area Health Education Centers	44,743,422	44,743,422
University of North Carolina at Charlotte	125,613,588	132,319,883
University of North Carolina at Greensboro	112,318,841	113,459,797
University of North Carolina at Pembroke	41,277,854	41,754,482
University of North Carolina at Wilmington	74,161,294	76,371,666
Western Carolina University	71,404,729	71,990,778
Winston-Salem State University	48,726,028	48,658,641
General Administration	48,804,831	48,890,151
University Institutional Programs	24,610,415	28,278,415
Related Educational Programs	112,937,512	114,905,552
North Carolina School of Science and Mathematics	14,555,420	14,513,392
UNC Hospitals at Chapel Hill	44,944,579	43,944,579
Total University of North Carolina – Board of Governors	\$ 2,086,052,890	\$ 2,119,397,081

## **HEALTH AND HUMAN SERVICES**

Department of Health and Human Services		
Office of the Secretary	\$ 113,855,919	\$ 118,880,919
Division of Aging	29,975,639	29,495,139
Division of Blind Services/Deaf/HH	9,676,797	9,681,220
Division of Child Development	268,350,017	267,356,799
Division of Education Services	33,852,267	34,281,895
Division of Facility Services	13,608,838	15,959,466

Division of Medical Assistance	2,509,772,054	2,751,209,159
Division of Mental Health	603,315,155	602,556,655
NC Health Choice	68,169,765	51,882,902
Division of Public Health	152,391,232	150,814,496
Division of Social Services	188,512,693	190,679,285
Division of Vocational Rehabilitation Services	41,755,526	42,142,193
Total Health and Human Services	\$ 4,033,235,902	\$ 4,264,940,128

## **NATURAL AND ECONOMIC RESOURCES**

Department of Agriculture and Consumer Services	\$ 52,040,846	\$ 51,032,884
Department of Commerce		
Commerce	49,686,999	36,728,265
Commerce State-Aid	26,512,085	11,722,085
NC Biotechnology Center	12,083,395	10,583,395
Rural Economic Development Center	25,277,607	25,052,607
Department of Environment and Natural Resources	177,197,119	167,451,089
Department of Labor	14,419,553	14,434,925

## **JUSTICE AND PUBLIC SAFETY**

Department of Correction	\$ 1,029,924,421	\$ 1,048,492,502
Department of Crime Control and Public Safety	34,793,934	35,153,488
Judicial Department	342,604,760	345,726,582
Judicial Department - Indigent Defense	94,037,973	88,648,414
Department of Justice	77,322,567	78,697,271
Department of Juvenile Justice and Delinquency Prevention	140,377,666	138,873,166

## **GENERAL GOVERNMENT**

Department of Administration	\$ 62,039,261	\$ 58,818,473
Office of Administrative Hearings	2,987,410	2,969,712
Department of State Auditor	10,850,737	10,840,918

Office of State Controller	10,043,268	10,044,511
Department of Cultural Resources		
Cultural Resources	73,433,514	62,917,147
Roanoke Island Commission	1,783,374	1,783,374
State Board of Elections	5,107,543	5,069,307
General Assembly	42,934,588	46,965,432
Office of the Governor		
Office of the Governor	5,324,590	5,344,528
Office of State Budget and Management	5,019,735	5,021,795
OSBM – Reserve for Special Appropriations	11,358,429	5,111,429
Housing Finance Agency	10,450,945	4,750,945
Department of Insurance		
Insurance	28,220,714	28,110,582
Insurance – Volunteer Safety Workers' Compensation	2,000,000	4,500,000
Office of Lieutenant Governor	754,737	753,037
Department of Revenue	81,447,475	80,630,250
Department of Secretary of State	8,934,063	9,269,633
Department of State Treasurer		
State Treasurer	8,690,595	8,295,843
State Treasurer – Retirement for Fire and Rescue Squad Workers	8,651,457	8,651,457

## **TRANSPORTATION**

Department of Transportation	\$ 200,000	\$ 0
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## **RESERVES, ADJUSTMENTS AND DEBT SERVICE**

Reserve for Compensation Increases	\$ 243,181,327	\$ 235,185,705
Salary Adjustment Fund: 2005-2007 Biennium	4,500,000	4,500,000
Salary Adjustment Fund: 2004-2005 Fiscal Year	4,500,000	4,500,000

Reserve for Teachers' and State Employees' Retirement Contribution	13,810,800	13,810,800
Reserve for Retirement System Payback	25,000,000	0
Reserve for Death Benefit Trust	12,899,200	12,899,200
Reserve for Disability Income Plan	6,586,500	6,586,500
Reserve for State Health Plan	108,648,000	142,728,000
Contingency and Emergency Fund	5,000,000	5,000,000
Reserve for Information Technology Rate Adjustments	(2,300,000)	(2,300,000)
Information Technology Fund	24,375,000	8,025,000
MH/DD/SAS Trust Fund	10,000,000	0
Health and Wellness Trust Fund	10,000,000	0
Reserve for Job Development Investment Grants (JDIG)	9,000,000	12,400,000
Reserve for Increased Fuel Costs	3,000,000	0
Reserve for Contingent Appropriations	85,000,000	85,000,000
Debt Service		
General Debt Service	489,544,211	619,291,140
Federal Reimbursement	1,616,380	1,616,380
<b>TOTAL CURRENT OPERATIONS – GENERAL FUND</b>	<b>\$ 17,025,846,458</b>	<b>\$ 17,293,127,963</b>

**GENERAL FUND AVAILABILITY STATEMENT**

**SECTION 2.2.(a)** The General Fund availability used in developing the 2005-2007 biennial budget is shown below:

	<b>FY 2005-2006</b>	<b>FY 2006-2007</b>
Unappropriated Balance Remaining from Previous Year	\$ 0	\$ 117,227,875
Projected Over Collections FY 2004-2005	681,500,000	0

Projected Reversions FY 2004-2005	115,000,000	0
Less Earmarkings of Year End Credit Balance		0
Savings Reserve Account	(199,125,000)	0
Repairs and Renovations	(125,000,000)	0
<b>Beginning Unreserved Credit Balance</b>	<b>\$ 472,375,000</b>	<b>\$ 114,345,875</b>
<b>Revenues Based on Existing Tax Structure</b>	<b>\$ 15,417,300,000</b>	<b>\$ 16,993,257,284</b>
<b>Nontax Revenues</b>		
Investment Income	74,800,000	78,700,000
Judicial Fees	144,800,000	148,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	49,500,000	51,300,000
Other Nontax Revenues	138,000,000	151,300,000
Highway Trust Fund/Use Tax		
Reimbursement Transfer	252,558,117	252,663,009
Highway Fund Transfer	16,166,400	16,166,400
<b>Subtotal Nontax Revenues</b>	<b>\$ 775,824,517</b>	<b>\$ 798,429,409</b>
<b>Total General Fund Availability</b>	<b>\$ 16,665,499,517</b>	<b>\$ 16,990,375,284</b>
<b>Adjustments to Availability: 2005 Session</b>		
Streamlined Sales Tax Changes	40,000,000	61,700,000
Maintain 4.5% Sales Tax Rate	417,100,000	462,700,000
Other Sales Tax Changes		
Apply Sales Tax to Candy	9,800,000	15,800,000
Apply General Sales Tax Rate to Cable	10,900,000	26,100,000
Exempt Potting Soil for Farmers	(200,000)	(300,000)
Tobacco Tax Rate Changes	118,800,000	189,400,000
Extend 8.25% Individual Income		
Tax Rate for 2 years	39,800,000	89,700,000
Continue Use Tax Line on Individual Returns	3,200,000	3,200,000
Conform Estate Tax to Federal Sunset	29,100,000	115,600,000
Film Industry Jobs Incentives	(3,500,000)	(3,500,000)
IRC Update – Partial Conformance	(8,000,000)	(10,700,000)
Adjust Rates for Health Maintenance		
Organizations	0	14,300,000
Increase Earmarking for		
NC Grape Growers Council	(150,000)	(150,000)
Proceeds from the Sale of the Polk Building	4,977,781	0
Justice and Public Safety Fees	17,028,271	20,428,271
Transfer from Tobacco Trust Fund	34,000,000	30,000,000
Transfers from Special Revenue and Other Funds	5,453,950	0
Reimburse Debt Service for		

Certain Capital Facilities and Land Acquisition per S.L. 2004-179	5,958,723	21,060,827
Transfer to Civil Penalty and Forfeiture Fund	(80,000,000)	(85,000,000)
Suspend Highway Fund Transfer	(16,166,400)	(16,166,400)
Adjust Transfer from Insurance Regulatory Fund	389,013	243,813
Adjust Transfer from Treasurer's Office	468,478	67,478
<b>Subtotal Adjustments to Availability:</b>		
<b>2005 Session</b>	<b>\$ 628,959,816</b>	<b>\$ 934,483,989</b>
<b>Revised General Fund Availability</b>	<b>\$ 17,294,459,333</b>	<b>\$ 17,927,741,273</b>
<b>Less: General Fund Appropriations</b>		
SB 622 (2005 Appropriations Act)	(17,077,231,458)	(17,293,127,963)
G.S. 143-15.3B: Clean Water Management Trust Fund	(100,000,000)	(100,000,000)
<b>Total General Fund Appropriations</b>		
<b>2005-2007 Biennium</b>	<b>(\$17,177,231,458)</b>	<b>(\$17,393,127,963)</b>
<b>Unappropriated Balance Remaining</b>	<b>\$ 117,227,875</b>	<b>\$ 534,613,310</b>

**SECTION 2.2.(b)** Notwithstanding G.S. 143-16.4(a2), of the funds credited to the Tobacco Trust Account from the Master Settlement Agreement pursuant to Section 6(2) of S.L. 1999-2 during the 2005-2007 fiscal biennium, the sum of thirty-four million dollars (\$34,000,000) for the 2005-2006 fiscal year and the sum of thirty million dollars (\$30,000,000) for the 2006-2007 fiscal year shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund) to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2005-2006 and 2006-2007 fiscal years.

**SECTION 2.2.(c)** G.S. 143-15.3 is amended by adding a new subsection to read:

"(a2) The transfer of funds to the Savings Reserve Account in accordance with this section or any other provision of law is not an "appropriation made by law", as that phrase is used in Article V, Section 7(1) of the North Carolina Constitution."

This subsection becomes effective June 30, 2005.

**SECTION 2.2.(d)** Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer one hundred twenty-five million dollars (\$125,000,000) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2005. Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2005-2006 fiscal year to be used in accordance with G.S. 143-15.3A. This subsection becomes effective June 30, 2005.

**SECTION 2.2.(e)** When the Highway Trust Fund was created in 1989, the revenue from the sales tax on motor vehicles was transferred from the General Fund to the Highway Trust Fund. To offset this loss of revenue from the General Fund, the Highway Trust Fund was required to transfer one hundred seventy million dollars (\$170,000,000) to the General Fund each year, an amount equal to the revenue in 1989 from the sales tax on motor vehicles. This transfer did not, however, make the General Fund whole after the transfer of the sales tax revenue because no provision has been made to adjust the amount for the increased volume of transactions and increased vehicle prices. The additional eighty million dollars (\$80,000,000) transferred from the Highway Trust Fund to the General Fund by this act is an effort to recover a portion of the sales tax revenues that would have gone to the General Fund over the last 16 years.

**SECTION 2.2.(f)** Notwithstanding G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2005-2006 fiscal year and for the 2006-2007 fiscal year is two hundred fifty million dollars (\$250,000,000).

**SECTION 2.2.(g)** Section 2.2(g) of S.L. 2002-126 is repealed.

**SECTION 2.2.(h)** Notwithstanding any other provision of law to the contrary, effective July 1, 2005, cash balances remaining in special funds on June 30, 2005, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) according to the schedule that follows. These funds shall be used to support General Fund appropriations for the 2005-2006 fiscal year.

<b>Fund</b>	<b>Amount Transferred</b>
Department of Environment and Natural Resources	
Budget Code 24300, Fund Code 2338 (DAQ-Inspections and Maintenance – Air Pollution)	\$ 300,000
Budget Code 24300, Fund Code 2106 (DEH – Sleep Products)	200,000
Budget Code 24300, Fund Code 2735 (DLR – Sedimentation Fees)	200,000
Budget Code 24300, Fund Code 2130 (DWQ – Well Construction Fund)	100,000
Budget Code 24300, Fund Code 2335 (DWQ – Lab Certification Fees)	100,000
Budget Code 24300, Fund Code 2341 (DWQ – Water Permits)	500,000
Budget Code 64306, Fund Code 6341 (DWQ – WW Treatment Maintenance and Repair)	100,000
Budget Code 24304, Fund Code 2982 (DWQ – Riparian Buffer Restoration)	2,000,000
Department of Corrections	
Budget Code 24502, (Inmate Canteen/Welfare Fund)	440,000
Judicial Department	
Budget Code 22005, Fund Code 2263 (Worthless Check Fund)	100,000
Department of Administration	
Budget Code 24160, Fund Code 2000 (NC Flex)	913,950



**SECTION 2.2.(i)** The transfer of cash from Department of Correction, Budget Code 74500, Fund Code 7100 (Prison Enterprises) to Nontax Budget Code 19978 (Intrastate Transfers) shall be increased by five hundred thousand dollars (\$500,000), effective July 1, 2005, for the 2005-2006 fiscal year.

**SECTION 2.2.(j)** The Governor shall analyze the current State public school teacher salary schedule, trends in salaries, and the current disparity between North Carolina teacher pay and the national average to determine how teacher pay affects the State's ability to recruit and retain highly qualified public school teachers to improve educational opportunity and outcomes for children across North Carolina. The Governor may, after consultation with the Speaker of the House and the President Pro Tempore of the Senate, devise and execute prior to July 1, 2006, a plan to reduce the disparity and may use funds available from the Reserve for Contingent Appropriations to begin to execute such a plan.

**PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND**

**CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND**

**SECTION 3.1.** Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2007, according to the following schedule:

<b>Current Operations – Highway Fund</b>	<b>2005-2006</b>	<b>2006-2007</b>
Department of Transportation		
Administration	\$ 93,888,317	\$ 95,100,980
Division of Highways		
Administration	30,621,612	30,632,164
Construction	167,010,000	139,750,000
Maintenance	804,714,539	714,793,288
Planning and Research	4,280,000	4,280,000
OSHA Program	425,000	425,000
Ferry Operations	21,264,811	21,264,811
State Aid		
Municipalities	91,910,000	92,650,000
Public Transportation	66,466,447	89,866,447
Railroads	17,308,153	17,101,153
Governor's Highway Safety	293,118	293,118
Division of Motor Vehicles	96,047,914	95,468,137
Other State Agencies	222,948,237	214,860,979
Reserves and Transfers	20,831,852	22,422,852

<b>TOTAL</b>	<b>\$1,638,010,000</b>	<b>\$1,538,908,929</b>
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**HIGHWAY FUND AVAILABILITY STATEMENT**

**SECTION 3.2.** The Highway Fund availability used in developing the 2005-2007 biennial budget is shown below:

<b>Highway Fund Availability Statement</b>	<b>2005-2006</b>	<b>2006-2007</b>
Beginning Credit Balance	\$ 10,490,000	–
Estimated Revenue	1,627,520,000	1,697,940,000
Estimated Reversions	–	–
<b>Total Highway Fund Availability</b>	<b>\$ 1,638,010,000</b>	<b>\$ 1,697,940,000</b>

**PART IV. HIGHWAY TRUST FUND APPROPRIATIONS**

**HIGHWAY TRUST FUND APPROPRIATIONS**

**SECTION 4.1.** Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2007, according to the following schedule:

<b>Current Operations – Highway Trust Fund</b>	<b>2005-2006</b>	<b>2006-2007</b>
Intrastate System	472,112,366	496,924,658
Urban Loops	190,902,579	200,935,637
Aid to Municipalities	49,535,599	52,138,988
Secondary Roads	86,825,599	90,358,988
Program Administration	41,295,740	42,918,720
Transfer to General Fund	252,558,117	252,663,009
<b>GRAND TOTAL CURRENT OPERATIONS AND EXPANSION</b>	<b>\$1,093,230,000</b>	<b>\$1,135,940,000</b>

**PART V. BLOCK GRANTS**

**DHHS BLOCK GRANTS**

**SECTION 5.1.(a)** Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2006, according to the following schedule:

**COMMUNITY SERVICES BLOCK GRANT**

01.	Community Action Agencies	\$ 15,071,666
02.	Limited Purpose Agencies	837,315
03.	Department of Health and Human Services to administer and monitor the activities of the Community Services Block Grant	837,315
TOTAL COMMUNITY SERVICES BLOCK GRANT		\$ 16,746,296
SOCIAL SERVICES BLOCK GRANT		
01.	County departments of social services (Transfer from TANF – \$4,500,000)	\$ 28,868,189
02.	Allocation for in-home services provided by county departments of social services	2,101,113
03.	Adult day care services	2,155,301
04.	Child Protective Services/CPS Investigative Services/Child Medical Evaluation Program	238,321
05.	Foster Care Services – CCIs	1,706,063
06.	Division of Aging and Adult Services – Home and Community Care Block Grant	1,834,077
07.	UNC-CH CARES Program for training and consultation services	247,920
08.	Mental Health Services Program	422,003
09.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Developmentally Disabled Services Program	5,000,000
10.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	3,234,601
11.	Division of Services for the Blind – Independent Living Program	3,182,987

12.	Division of Vocational Rehabilitation Services – Easter Seals Society/UCP	188,263
13.	Office of the Secretary – Office of Economic Opportunity for N.C. Senior Citizens' Federation for outreach services to low-income elderly persons	41,302
14.	Child Care Subsidies	3,150,000
15.	Division of Facility Services – Adult Care Licensure Program	411,897
16.	Division of Facility Services – Mental Health Licensure	205,668
17.	State administration	1,706,017
18.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services – Administration	18,098
19.	Division of Facility Services	37,204
20.	Office of the Secretary – NC Interagency Council for Coordinating Homeless Programs	250,000
21.	Department of Administration for the N.C. State Commission of Indian Affairs In-Home Services Program for the Elderly	203,198
22.	Transfer to Preventative Health Services Block Grant for HIV/AIDS education, counseling, and testing	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		\$ 55,348,041
LOW-INCOME ENERGY BLOCK GRANT		
01.	Energy Assistance Programs	\$ 13,208,740
02.	Crisis Intervention	9,592,387

03.	Administration		3,186,258
	County DSS	\$1,930,734	
	Division of Social Services	\$ 300,000	
	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	\$ 7,146	
	Local Residential Energy Efficiency Service Providers	\$ 353,820	
	Office of the Secretary	\$ 594,558	
04.	Weatherization Program		4,343,072
05.	Department of Administration – N.C. State Commission of Indian Affairs		54,840
06.	Heating Air Repair and Replacement Program		2,025,687
TOTAL LOW-INCOME ENERGY BLOCK GRANT			\$ 32,410,984
MENTAL HEALTH SERVICES BLOCK GRANT			
01.	Provision of community-based services for severe and persistently mentally ill adults		\$ 6,983,202
02.	Provision of community-based services to children		3,921,991
03.	Comprehensive Treatment Services Program for Children		1,500,000
04.	Administration		568,911
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT			\$ 12,974,104
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT			
01.	Provision of community-based alcohol and drug abuse services, tuberculosis services, and services provided by the Alcohol and Drug Abuse Treatment Centers		\$ 20,441,082

02.	Continuation of services for pregnant women and women with dependent children	8,069,524
03.	Continuation of services to IV drug abusers and others at risk for HIV diseases	4,816,378
04.	Child Substance Abuse Prevention	5,835,701
05.	Provision of services to children and adolescents	4,940,500
06.	Juvenile Services – Family Focus	851,156
07.	Allocation to the Division of Public Health for HIV/STD Risk Reduction Projects	383,980
08.	Allocation to the Division of Public Health for HIV/STD Prevention by County Health Departments	209,576
09.	Allocation to the Division of Public Health for the Maternal and Child Health Hotline	37,779
10.	Administration	2,596,307
<b>TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT</b>		<b>\$ 48,181,983</b>
<b>CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT</b>		
01.	Child care subsidies	\$161,058,393
02.	Quality and availability initiatives	33,059,644
03.	Administrative expenses	7,163,654
04.	Transfer from TANF Block Grant for child care subsidies	81,292,880
<b>TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT</b>		<b>\$282,574,571</b>

TEMPORARY ASSISTANCE TO NEEDY FAMILIES  
(TANF) BLOCK GRANT

01.	Work First Cash Assistance	\$114,625,680
02.	Work First County Block Grants	94,653,315
03.	Child Welfare Workers for local DSS	12,452,391
04.	Support Our Students – Department of Juvenile Justice and Delinquency Prevention	2,749,642
05.	Family Violence Prevention	1,200,000
06.	Work First – After-School Services for At-Risk Children YWCA Central Carolinas Youth Development Programs \$176,000	2,249,642
07.	Division of Social Services – Administration	356,291
08.	Office of the Secretary – Administration	60,249
09.	Child Welfare Training	2,550,000
10.	Boys and Girls Clubs	1,500,000
11.	Work Central Career Advancement Center	550,000
12.	Special Children's Adoption Fund	3,000,000
13.	Maternity Homes	838,000
14.	After-School Programs for At-Risk Youth in Middle Schools	500,000
15.	Pregnancy Prevention Initiatives	2,500,000
16.	Subsidized Child Care for TANF Recipients	36,563,266
17.	TANF Automation Projects	592,500

18.	NC FAST Implementation	2,717,298
19.	Transfer to the Child Care and Development Fund Block Grant for child care subsidies	81,292,880
20.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		\$365,451,154

MATERNAL AND CHILD HEALTH BLOCK GRANT

01.	Healthy Mothers/Healthy Children Block Grants to Aid-to-County	9,359,236
02.	Children's Health Services Aid-to-County	7,364,216
03.	Healthy Beginnings Aid-to-County	404,559
04.	Maternal Health Aid-to-County	397,761
05.	Children's Health Services	2,836,028
06.	Office of Women's Health and Maternal Health Activities	114,063
07.	State Center for Health Statistics	28,874
08.	Local Technical Assistance & Training	46,866
09.	Injury and Violence Prevention	149,438
10.	Office of Minority Health	99,352
11.	Special Supplemental Nutrition Program for Women, Infants and Children (WIC)	25,713
12.	Immunization Program – Vaccine Distribution	819,997
13.	Administration	475,282



14.	Adolescent Pregnancy Prevention Coalition of NC Total of \$150,000 grant-in-aid	85,710
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TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	\$ 22,207,095
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**PREVENTIVE HEALTH SERVICES BLOCK GRANT**

01.	Statewide Health Promotion Programs	\$3,653,520
02.	Rape Crisis/Victims' Services Program – Council for Women	197,112
03.	Transfer from Social Services Block Grant – HIV/AIDS education, counseling, and testing	145,819
04.	Oral Health	134,251
05.	Administration and Program Support	121,271
06.	Osteoporosis Task Force Operating Costs	150,000

TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT	\$4,401,973
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**GENERAL PROVISIONS**

**SECTION 5.1.(b)** Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

- (1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
- (2) A delineation of the proposed State and local administrative expenditures.
- (3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
- (4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
- (5) A projection of current year expenditures by program or activity.
- (6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

**SECTION 5.1.(c)** Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section or increase State administrative expenditures.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section. In allocating a decrease in federal fund availability, the Department shall not eliminate the funding for a program or activity appropriated in this section unless it is related to the State administration.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 5.1.(d)** All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grant shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 5.1.(e)** The Department of Health and Human Services shall develop a monitoring and oversight plan for all recipients, both public and private, and subrecipients of the federal Block Grant funding. The plan shall be modeled after the Department's performance contracting initiative and include the following:

- (1) Performance standards for recipients.
- (2) Financial audit standards for non-State entities equivalent to the requirements in G.S. 143-6.2 for non-State entities receiving State funds.
- (3) Means for collecting performance data from recipients.
- (4) Any other information necessary for monitoring and overseeing the use of Block Grant funding.

The Department shall provide the plan to the Fiscal Research Division by January 1, 2006.

**SECTION 5.1.(f)** The Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on positions funded from federal Block Grants. The report shall include the following for each Block Grant:

- (1) All State positions currently funded through the Block Grant, including permanent, temporary, and time-limited positions.
- (2) Budgeted salary and fringe benefits for each position.
- (3) Identify the percentage of Block Grant funds used to fund each position.

The report shall be submitted no later than December 1, 2005.

#### **SOCIAL SERVICES BLOCK GRANT**

**SECTION 5.1.(g)** Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs are exempt from the provisions of 10A NCAC 71R.0201(3).

#### **LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM**

**SECTION 5.1.(h)** Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

#### **MENTAL HEALTH BLOCK GRANT**

**SECTION 5.1.(i)** The sum of one million five hundred thousand dollars (\$1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2005-2006 fiscal year, and the sum of four hundred twenty-two thousand three dollars (\$422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children in accordance with Section 10.25 of this act.

**SECTION 5.1.(j)** The Department of Health and Human Services shall contract with the University of North Carolina at Chapel Hill for the purpose of providing psychology student stipends in the amount of fifty thousand dollars (\$50,000) for the 2005-2006 fiscal year. Twenty-five thousand dollars (\$25,000) of this contract shall be paid from the Mental Health Block Grant.

#### **CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT**

**SECTION 5.1.(k)** The sum of no more than four hundred thousand dollars (\$400,000) appropriated in this section to the Department of Health and Human

Services in the Child Care and Development Fund Block Grant may be used for the operations of the Medical Child Care Pilot.

**SECTION 5.1.(l)** Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development and School Readiness for the subsidized child care program.

**SECTION 5.1.(m)** If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

**TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)**

**SECTION 5.1.(n)** The sum of four hundred sixteen thousand five hundred forty dollars (\$416,540) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to support administration of TANF-funded programs.

**SECTION 5.1.(o)** The sum of two million seven hundred forty-nine thousand six hundred forty-two dollars (\$2,749,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services and transferred to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year shall be used to support the existing Support Our Students Program, including gang prevention, and to expand the Program statewide, focusing on low-income communities in unserved areas. These funds shall not be used for administration of the Program.

**SECTION 5.1.(p)** The sum of one million two hundred thousand dollars (\$1,200,000) appropriated under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2005-2006 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars (\$75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall jointly develop a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2005. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars (\$5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2005, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2005. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

The Department of Health and Human Services shall report on the uses of these funds no later than March 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 5.1.(q)** The sum of two million two hundred forty-nine thousand six hundred forty-two dollars (\$2,249,642) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration. The Department shall report no later than March 1, 2006, on its progress in complying with this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 5.1.(r)** The sum of twelve million four hundred fifty-two thousand three hundred ninety-one dollars (\$12,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2005-2006 fiscal year for child welfare improvements, shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

**SECTION 5.1.(s)** The sum of two million five hundred fifty thousand dollars (\$2,550,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for fiscal year 2005-2006 shall be used to support various child welfare training projects as follows:

- (1) Provide a regional training center in southeastern North Carolina.

- (2) Support the Masters Degree in Social Work/Baccalaureate Degree in Social Work Collaborative.
- (3) Provide training for residential child care facilities.
- (4) Provide for various other child welfare training initiatives.

**SECTION 5.1.(t)** The sum of eight hundred thirty-eight thousand dollars (\$838,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services shall be used to purchase services at maternity homes throughout the State.

**SECTION 5.1.(u)** The sum of three million dollars (\$3,000,000) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Special Children Adoption Fund, for the 2005-2006 fiscal year shall be used in accordance with Section 10.48 of this act. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

**SECTION 5.1.(v)** The sum of one million seven hundred six thousand sixty-three dollars (\$1,706,063) appropriated in this section in the TANF Block Grant for child caring agencies for the 2005-2006 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

**SECTION 5.1.(w)** The sum of one million five hundred thousand dollars (\$1,500,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant for Boys and Girls Clubs shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

**SECTION 5.1.(x)** The sum of five hundred fifty thousand dollars (\$550,000) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant shall be transferred to Work Central, Inc. Work Central, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Work Central, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not

duplicative of local employment security commissions in the nine counties served by Work Central, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2006.

**SECTION 5.1.(y)** The sum of two million seven hundred seventeen thousand two hundred ninety-eight dollars (\$2,717,298) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance, and Child Development. The statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2006.

**SECTION 5.1.(z)** The sum of five hundred thousand dollars (\$500,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on its progress in complying with this subsection no later than May 1, 2006.

**SECTION 5.1.(z1)** In implementing the TANF Block Grant, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

**SECTION 5.1.(z2)** The Department of Health and Human Services shall reallocate up to eight million two hundred eight thousand nine hundred thirty-one dollars (\$8,208,931) from General Fund appropriations for Work First Cash Assistance payments for fiscal year 2005-2006 to the Adoption and Foster Care Programs to fund shortfalls in foster care and adoption services during State fiscal year 2005-2006. Of these reallocated funds, six million eight hundred thirty-one thousand three hundred

fifteen dollars (\$6,831,315) shall be TANF cash assistance carryforward from State fiscal year 2004-2005, and one million three hundred seventy-seven thousand six hundred sixteen dollars (\$1,377,616) shall be from the State fiscal year 2005-2006 appropriation for State TANF cash assistance. The Department of Health and Human Services shall use State funds reallocated under this subsection only after all other appropriated State and federal funding for adoption and foster care has been exhausted and may only use these funds for adoption and foster care or to maintain the State TANF cash assistance maintenance of effort (MOE).

The Department shall submit a report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than April 1, 2006. The report shall provide specific information on how funding for adoption and foster care has been spent. The following data shall be included:

- (1) The total number of foster children served and the number that are IV-E eligible, by county.
- (2) The amount of federal and State spending for both foster care and adoption by funding source.
- (3) Total payments made to child caring institutions (CCIs) by institution, the number of children served by each, and the total number of days of foster care services each provided.
- (4) The daily payment provided by each child caring institution to foster parents.
- (5) The amount of funding for foster care provided to each county, the number of children placed in foster care, and the number of days of care provided.
- (6) For each county, the number of children placed in county foster homes and the number placed by CCIs.
- (7) The length of time children placed by counties and by child caring institutions remain in foster care, listed by county and by CCI.
- (8) The amount of funding for adoption provided to each county and the number of children placed by each county.
- (9) The amount of funding provided to each private adoption agency and the number of children placed by each adoption agency.
- (10) The number of children adopted out of foster care by child caring institution and by county.
- (11) The special needs adoption assistance-amount spent and the number of children included.

#### **MATERNAL AND CHILD HEALTH BLOCK GRANT**

**SECTION 5.1.(aa)** If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2005-2006 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish



an Abstinence Until Marriage Education Program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

**SECTION 5.1.(bb)** The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

**SECTION 5.1.(cc)** Of the funds budgeted in the Maternal and Child Health Block Grant, three million two hundred fifty thousand dollars (\$3,250,000) shall be used for a school nurse funding initiative for the 2005-2006 fiscal year. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund approximately 65 time-limited nurses. The criteria shall include determining the areas in the greatest need for school nurses with the greatest inability to pay for these nurses. Among other criteria, consideration shall also be given to (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local or Title I funds with these block grant funds. Communities shall maintain their current level of effort and funding for school nurses. No block grant funds shall be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

## **NER BLOCK GRANTS**

**SECTION 5.2.(a)** Appropriations from federal block grant funds are made for fiscal year ending June 30, 2006, according to the following schedule:

### **COMMUNITY DEVELOPMENT BLOCK GRANT**

01. State Administration	\$ 1,000,000
02. Urgent Needs and Contingency	1,000,000
03. Scattered Site Housing	13,200,000
04. Economic Development	8,710,000
05. Community Revitalization	13,500,000
06. State Technical Assistance	450,000

07. Housing Development	2,000,000
08. Infrastructure	5,140,000

TOTAL COMMUNITY DEVELOPMENT  
BLOCK GRANT – 2006 Program Year \$ 45,000,000

**SECTION 5.2.(b)** Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

**SECTION 5.2.(c)** Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

**SECTION 5.2.(d)** Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars (\$1,000,000) may be used for State Administration; not less than one million dollars (\$1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars (\$13,200,000) may be used for Scattered Site Housing; up to eight million seven hundred ten thousand dollars (\$8,710,000) may be used for Economic Development, including Urban Redevelopment Grants and Small Business or Entrepreneurial Assistance; not less than thirteen million five hundred thousand dollars (\$13,500,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars (\$450,000) may be used for State Technical Assistance; up to two million dollars (\$2,000,000) may be used for Housing Development; up to five million one hundred forty thousand dollars (\$5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

**SECTION 5.2.(e)** Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

**SECTION 5.2.(f)** Department of Commerce Demonstration Grants in Partnership with Rural Economic Development Center, Inc. – The Department of Commerce, in partnership with the Rural Economic Development Center, Inc., shall award up to two million two hundred fifty thousand dollars (\$2,250,000) in demonstration grants to local governments in very distressed rural areas of the State.

These grants shall be used to address critical infrastructure and entrepreneurial needs and to provide small business assistance.

**SECTION 5.2.(g)** The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

- (1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.
- (2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made, the Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

## **PART VI. GENERAL PROVISIONS**

### **APPROPRIATION OF CASH BALANCES AND RECEIPTS**

**SECTION 6.1.(a)** Expenditures of cash balances, federal funds, departmental receipts, grants, and gifts from the various General Fund, Special Revenue Fund, Enterprise Fund, Internal Service Fund, and Trust and Agency Fund budget codes are appropriated and authorized for the 2005-2007 fiscal biennium as follows:

- (1) For all budget codes listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2005-2006 fiscal year and the 2006-2007 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly.
- (2) For all budget codes that are not listed in "State of North Carolina, Recommended Continuation Budget 2005-2007, Volumes 1 through 6", cash balances and receipts are appropriated for each year of the 2005-2007 fiscal biennium up to the level of actual expenditures for the 2004-2005 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the 2004-2005 fiscal year.

- (3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2005-2006 fiscal year and the 2006-2007 fiscal year and shall be used only to pay debt service requirements.
- (4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2005-2006 fiscal year and the 2006-2007 fiscal year.

All these cash balances, federal funds, departmental receipts, grants, and gifts shall be expended and reported in accordance with the provisions of the Executive Budget Act, except as otherwise provided by law and this section.

**SECTION 6.1.(b)** Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the Executive Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143-23 and G.S. 143-27, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

**SECTION 6.1.(c)** Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

**SECTION 6.1.(d)** Notwithstanding subsections (a) and (b) of this section, if Senate Bill 1126, 2005 Session, or substantially similar legislation revising the Coastal Recreational Fishing License program or establishing a unified fishing license for hunting and fishing in coastal, joint, and inland waters, becomes law, any receipts from license revenues generated pursuant to such legislation are hereby appropriated for the 2005-2006 fiscal year and the 2006-2007 fiscal year for programs and purposes authorized by law.

## **CONTINGENCY AND EMERGENCY FUND ALLOCATIONS**

**SECTION 6.2.** Funds in the amount of five million dollars (\$5,000,000) for the 2005-2006 fiscal year and five million dollars (\$5,000,000) for the 2006-2007 fiscal year are appropriated in this act to the Contingency and Emergency Fund. Of these funds:

- (1) Up to one million dollars (\$1,000,000) for the 2005-2006 fiscal year may be used for purposes related to the Base Realignment and Closure Act (BRAC); and
- (2) Notwithstanding any other provision of law, no more than five hundred thousand dollars (\$500,000) for the 2005-2006 fiscal year and no more than five hundred thousand dollars (\$500,000) for the 2006-2007 fiscal year shall be expended for purposes other than those set out in G.S.143-23(a1)(2) or in subdivision (1) of this section.

The remainder of these funds shall be expended for purposes outlined in G.S. 143-23(a1)(2).

#### **EXPENDITURES OF FUNDS IN RESERVES LIMITED**

**SECTION 6.3.** All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

#### **BUDGET REPORTS ACCURATELY REFLECT PROJECTED RECEIPTS, EXPENDITURES, FUND BALANCES, AND ACTUAL COLLECTIONS**

**SECTION 6.4.** G.S. 143-11(a) reads as rewritten:

**"§ 143-11. Survey of ~~departments.~~ departments and recommended budget report.**

(a) On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receives or may receive for use and expenditure any State funds, in accordance with the classification of funds and accounts adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each

line item of the proposed expenditures, the budget shall show in separate parallel columns:

- (1) Proposed expenditures and receipts for each fiscal year of the biennium;
- (2) The certified budget for the preceding fiscal year;
- (3) The currently authorized budget for the preceding fiscal year;
- (4) Actual expenditures and receipts for the most recent fiscal year for which actual expenditure information is available; and
- (5) Proposed increases and decreases.

Revenue and expenditure information shall be no less specific than the two-digit level in the State Accounting System Chart of Accounts as prescribed by the State Controller. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital improvements. The budget report shall include accurate projections of receipts, expenditures, and fund balances for all budget codes, funds, and accounts. Estimated receipts, including tuition collected by university or community college institutions, shall be adjusted to reflect actual collections from the previous fiscal year, unless the Director either (i) recommends a change that will result in collections in the budget year that differ from the actual collections of the prior year or (ii) otherwise determines there is a more reasonable basis upon which to accurately project receipts."

## **AUTHORIZATION TO ESTABLISH RECEIPT-SUPPORTED POSITIONS**

**SECTION 6.5.** Notwithstanding G.S. 143-34.1(a1), a department, institution, or other agency of State government may establish receipt-supported positions authorized in this act upon approval by the Director of the Budget. The Director, if necessary, may establish a receipt-supported position pursuant to this section at an annual salary amount different from the salary amount set out in this act if (i) funds are available from the proposed funding source and (ii) the alternative salary amount remains within the established salary range grade identified for the job classification of the affected receipt-supported position established in this act. The Director shall not change the job classifications or increase the number of receipt-supported positions specified in this act without prior consultation with the Joint Legislative Commission on Governmental Operations.

## **OVERHEAD COST RECOVERY**

**SECTION 6.6.(a)** The General Assembly finds that the General Fund supports many State agencies that provide services and administer programs that impact all of State government. These agencies include the Office of the Governor, the Office of State Controller, the Department of Administration, including the Office of State Personnel, State Property Office, Office of State Construction, and the Division of Purchase and Contract, the Secretary of State, the Office of State Treasurer, and the Office of State Auditor. The General Assembly also finds that the General Fund bears the departmental administrative overhead costs for many programs, activities, boards, and commissions that are supported by non-General Fund sources. The General

Assembly finds that an indirect cost allocation program should be established to reimburse the General Fund for overhead and indirect costs incurred on behalf of these programs, activities, boards, and commissions.

**SECTION 6.6.(b)** The Office of State Budget and Management shall study the allocation of overhead costs and propose an overhead cost recovery program for consideration by the General Assembly. In developing its recommendation, the Office of State Budget and Management shall do the following:

- (1) Determine a methodology appropriate for the calculation and allocation of overhead costs.
- (2) For each program whose overhead costs are borne in whole or in part by the General Fund and that receive overhead cost reimbursement from the federal government or other non-General Fund sources, ensure that all future overhead cost reimbursements revert to the General Fund in accordance with the State Budget Manual, except as otherwise required by law.
- (3) For each program whose overhead costs are borne in whole or in part by the General Fund and that are not recovering overhead costs from other funding sources, establish an indirect cost allocation methodology that properly reimburses the General Fund, except as otherwise required by law.
- (4) Estimate the anticipated reimbursement to the General Fund.

**SECTION 6.6.(c)** The Office of State Budget and Management shall report its recommendations developed pursuant to this section to the Chairs of the Senate Committee on Appropriations/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division by April 1, 2006.

**SECTION 6.6.(d)** Overhead cost recovery recommendations developed pursuant to this section shall not apply to overhead cost reimbursements collected under any grant agreement by The University of North Carolina or any of its affiliated institutions.

## **PRIOR CONSULTATION WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS**

**SECTION 6.7.(a)** The last paragraph of G.S. 120-76(8) is recodified as G.S. 120-76.1 and reads as rewritten:

### **"§ 120-76.1. Prior consultation with the Commission.**

(a) Notwithstanding the provisions of ~~this subdivision~~ G.S. 120-76(8) or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action ~~under this subsection~~ without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this ~~paragraph~~ subsection no later than 30 days after making the expenditure and shall

identify in the report the emergency, the type of action taken, and how it was related to the emergency.

(b) Any agency, board, commission, or other entity required under G.S. 120-76(8) or any other provision of law to consult with the Commission prior to taking an action shall submit a detailed report of the action under consideration to the Chairs of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly. If the Commission does not hold a meeting to hear the consultation within 90 days of receiving the submission of the detailed report, the consultation requirement is satisfied.

(c) Consultations regarding the establishment of new fees and charges and the increase of existing fees and charges are governed by G.S. 12-3.1, and this section does not apply to those consultations."

**SECTION 6.7.(b)** G.S. 143-23(a1) reads as rewritten:

"(a1) Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

- (1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;
- (2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:
  - a. Required by a court, Industrial Commission, or administrative hearing officer's order;
  - b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
  - c. Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or

- (3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. The consultation is required as follows:
  - a. For a purpose or program with a certified budget of up to five million dollars (\$5,000,000), consultation is required when the authorization for the overexpenditure exceeds ten percent (10%) of the certified budget;
  - b. For a purpose or program with a certified budget of from five million dollars (\$5,000,000) up to twenty million dollars



(\$20,000,000), consultation is required when the authorization for the overexpenditure exceeds five hundred thousand dollars (\$500,000) or seven and one-half percent (7.5%) of the certified budget, whichever is greater;

- c. For a purpose or program with a certified budget of twenty million dollars (\$20,000,000) or more, consultation is required when the authorization for the overexpenditure exceeds one million five hundred thousand dollars (\$1,500,000) or five percent (5%) of the certified budget, whichever is greater;
- d. For a purpose or program supported by federal funds or when expenditures are required for the reasons set out in subdivision (2) of this subsection, no consultation is required.

~~If the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days, the Director of the Budget may satisfy the requirements of the subsection to report to or consult with the Commission by reporting to or consulting with a joint meeting of the Chairs of the Appropriations Committees of the Senate and the House of Representatives."~~

## **CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES IN ACCORDANCE WITH BUDGET ACT AND CLARIFICATION OF THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF AGENCY FEES AND CHARGES**

**SECTION 6.8.(a)** Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in the Current Operations and Capital Improvements Appropriations Act of 2005 or the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, which was distributed in the Senate and the House of Representatives and used to explain this act.

**SECTION 6.8.(b)** G.S. 12-3.1 reads as rewritten:

### **"§ 12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

- (1) ~~The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~

- (2) ~~The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with~~

a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased. The agency shall submit a request for consultation to all members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly on the same date the notice of text of the rule is published. The request for consultation shall consist of a written report stating (i) the amount of the current fee or charge, if applicable, (ii) the amount of the proposed new or increased fee or charge, (iii) the statutory authority for the fee or charge, and (iv) a detailed explanation of the need for the establishment or increase of the fee or charge.

(a1) If the Commission does not hold a meeting to hear the consultation required by subsection (a) of this section within 90 days after the notice of text of the rule has been published and the consultation request required by subsection (a) of this section has been submitted, the consultation requirement is satisfied.

(b) Definitions. – The following definitions apply in this section:

- (1) Agency. – Every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. The term does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of these subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) Rule. – Every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency, including rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) Exceptions. – This section does not apply to any of the following:

- (1) Rules establishing fees or charges to State, federal or local governmental units.
- (2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.
- (3) Reasonable registration fees covering the cost of a conference or workshop.
- (4) Reasonable user fees covering the cost of providing data processing services.

(d) In lieu of the requirements of ~~subdivision (a)(2)~~ subsections (a) and (a1) of this section, the North Carolina State Ports Authority shall report the establishment or

increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11)."

**SECTION 6.8.(c)** Subsection (a) of this section expires June 30, 2007.

**STATE GRANT RECIPIENTS/CONFLICT OF INTEREST POLICY/NO OVERDUE TAX DEBTS/OTHER TECHNICAL AND CLARIFYING CHANGES**

**SECTION 6.9.(a)** G.S. 143-6.2 reads as rewritten:

**"§ 143-6.2. Use of State funds by non-State entities.**

(a) Disbursement and Use of State Funds. – Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State. For the purposes of this section, ~~the term "non State entity" means a firm, corporation, partnership, association, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution. For the purposes of this section, "unit of local government" has the meaning set out in G.S. 159-7(15) and "public authority" has the meaning set out in G.S. 159-7(10).~~ section, the following definitions apply:

- (1) Non-State entity. – A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (2) Unit of local government. – A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.
- (3) Public authority. – A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(b) For the purposes of this section, the term "grantee" means a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The term "subgrantee" means a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. The terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

(b1) Conflict of Interest Policy. – Every grantee shall file with the State agency or department disbursing funds to the grantee a copy of that grantee's policy addressing

conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds and shall include actions to be taken by the grantee or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State department or agency may disburse the grant funds.

(b2) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143-34(b).

(c) Compliance by Non-State Entities. – If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies any information required by this section or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action includes suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(d) The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The rules shall establish policies and procedures for disbursements of grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. Such policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (3) Ensure that funds are spent in accordance with the purposes for which they were granted.
- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of State grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of State funds.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information. The mandatory periodic reporting requirements shall require grantees and subgrantees to file with the

State Auditor copies of reports and statements that are filed with State agencies pursuant to this subsection. Compliance with the mandatory periodic reporting requirements of this subdivision shall not require grantees and subgrantees to file with the State Auditor the information described in subsections (b1) and (b2) of this section.

- (7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all State grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.
- (8) Require grantees and subgrantees to ensure that work papers in the possession of their auditors are available to the State Auditor for the purposes set out in subsection (h) of this section.
- (9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by State grant funds and each subgrantee project, program, or activity supported by State grant funds.
- (10) Provide procedures for the suspension of further disbursements or use of State grant funds for noncompliance with these rules or other inappropriate use of the funds.
- (11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of State grant funds.
- (12) Provide procedures for the recovery and return to the grantor State agency of unexpended State grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Notwithstanding the provisions of G.S. 150B-2(8a)b, rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by subsection (d) of this section.

(g) The Office of State Budget and Management, after consultation with the administering agency, shall have the power to suspend disbursement of State grant funds to grantees or subgrantees, to prevent further use of State grant funds already disbursed, and to recover State grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(h) **Audit Oversight.** – The State Auditor has audit oversight, with respect to State grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends State grant funds. A grantee or subgrantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State grant funds received by the grantee or subgrantee. The grantee or subgrantee must furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of State grant funds.

(i) Not later than May 1, 2007, and by May 1 of every succeeding year, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on all grantees or subgrantees that failed to comply with this section during the prior fiscal year, including the amount of State funds that were disbursed to each of those grantees or subgrantees during that fiscal year and the amount of State funds that were withheld.

(j) Grantor State agencies shall submit a list to the State Auditor, in the format prescribed by the State Auditor, by October 31 each year of every grantee to which the agency disbursed State funds in the prior fiscal year, the amount disbursed, the amount disbursed to each grantee, and other such information as required by the State Auditor to comply with the requirements set forth in this section.

(k) **Civil Actions.** – Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County."

**SECTION 6.9.(b)** G.S. 143-34 reads as rewritten:

**"§ 143-34. Penalties and punishment for violations.**

(a) A-Except as provided by subsection (b) of this section, a refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred fifty dollars (\$250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a Class 1 misdemeanor. If ~~such the~~ offender ~~be-is~~ not an officer elected by vote of the people, ~~such the~~ offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to ~~such the~~ offender.

(b) A false statement made in violation of G.S. 143-6.2(b2) is a Class A1 misdemeanor offense."

**SECTION 6.9.(c)** This section shall apply to all State grant funds appropriated or awarded on or after July 1, 2005. Grants awarded prior to July 1, 2005, shall be subject to the reporting requirements in effect at the time the grant was made.

**AMEND THE TOBACCO RESERVE FUND TO PROMOTE THE HEALTH AND WELLNESS OF THE STATE'S CITIZENS AND ECONOMIC DEVELOPMENT**

**SECTION 6.12.(a)** G.S. 66-291(b)(2) reads as rewritten:

"(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than ~~the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of that agreement, including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or".

**SECTION 6.12.(b)** If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. 66-291(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect.

**SECTION 6.12.(c)** This section becomes effective January 1, 2006.

**INFORMATION TECHNOLOGY FUND AVAILABILITY STATEMENT**

**SECTION 6.13.(a)** The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	<b>FY 2005-2006</b>	<b>FY 2006-2007</b>
Receipts from Information Technology		
Enterprise Fee (G.S. 147-33.82)	\$5,000,000	\$5,000,000
Transfer from June 30, 2005, Information Technology		
Services Internal Service Fund cash balance to support statewide IT initiatives	\$5,000,000	
Appropriation from General Fund	\$24,375,000	\$8,025,000

**Total Funds Available** **\$34,375,000** **\$13,025,000.**

**SECTION 6.13.(b)** Of the funds collected by the Office of Information Technology Services from the information technology enterprise fee approved by the Office of State Budget and Management pursuant to G.S. 147-33.82, the Office shall deposit the sum of five million dollars (\$5,000,000) for the 2005-2006 fiscal year and the sum of five million dollars (\$5,000,000) for the 2006-2007 fiscal year in the Information Technology Fund established in G.S. 147-33.72H.

**SECTION 6.13.(c)** Effective July 1, 2005, the State Controller shall transfer to the Information Technology Fund established in G.S. 147-33.72H the sum of five million dollars (\$5,000,000) from the cash balance remaining in the Office of Information Technology Services Internal Service Fund on June 30, 2005.

**INFORMATION TECHNOLOGY APPROPRIATIONS**

**SECTION 6.14.** Appropriations are made from the Information Technology Fund established in G.S. 147-33.72H as follows:

<b>Office of Information Technology Services</b>	<b>FY 2005-2006</b>	<b>FY 2006-2007</b>
To establish two project management assistant positions and one enterprise licensing position and to purchase and maintain asset management software and enterprise licenses.	\$1,600,000	\$1,400,000
To continue existing activities including project management assistance, security, asset management, legal support, and legacy system assessment.	\$5,100,000	\$3,300,000
To provide services previously supported by cross subsidies in the rate structure, including State portal maintenance, security services, enterprise identity management, and office operations.	\$6,300,000	\$5,800,000
To facilitate consolidation of information technology services in State agencies.	\$500,000	
<b>Office of State Controller</b>		
To initiate replacement of the State's personnel and payroll systems consistent with the analysis and findings of the Statewide Business Infrastructure study.	\$20,875,000	\$2,525,000
<b>Total Appropriation</b>	<b>\$34,375,000</b>	<b>\$13,025,000</b>

Funds appropriated under this section are subject to the reporting requirement set out in G.S. 147-33.72H.



## **MONITOR AND EVALUATE LEASE PURCHASE AND INSTALLMENT PURCHASE ACTIVITY**

**SECTION 6.17.(a)** By December 30, 2005, the Office of State Budget and Management, in consultation with the Office of State Treasurer, the Office of State Controller, and the Department of Administration shall:

- (1) Develop and implement a management process that does all of the following:
  - a. Standardizes the criteria used by executive branch agencies to evaluate the business case for acquisitions by lease purchase and installment purchase.
  - b. Provides for executive branch agency budget submissions that clearly show current and proposed debt service requirements occasioned by existing and proposed lease purchase and installment purchase agreements.
  - c. Provides that all lease purchase and installment purchase agreements entered into by executive branch agencies (i) contain provisions to protect the interests of the State against nonperformance or insolvency and (ii) are centrally inventoried and monitored.
  - d. Includes debt accruing through lease purchase and installment purchase activity by executive branch agencies in the annual report of the Debt Affordability Advisory Committee required by G.S. 142-101.
  - e. Evaluates the advantages of a pooled or master lease or installment arrangement.
- (2) Prepare a consolidated report summarizing by State agency all lease purchase and installment purchase expenditures in the current fiscal year and all lease purchase and installment purchase expenditures planned for the upcoming fiscal year and submit the report to the Chairs of the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division on the first day of the 2006 and 2007 Regular Sessions of the General Assembly.

**SECTION 6.17.(b)** This section does not apply to The University of North Carolina.

## **PRIVATE LICENSE PLATES ON PUBLICLY OWNED MOTOR VEHICLES**

**SECTION 6.18.(a)** Section 6.14(b) of S.L. 2001-424 is repealed.

**SECTION 6.18.(b)** This section becomes effective April 30, 2005.

## **UNIFORM PAYROLL SYSTEM**

**SECTION 6.19.** G.S. 143B-426.39 reads as rewritten:

**"§ 143B-426.39. Powers and duties of the State Controller.**

The State Controller shall:

...

- (6) ~~Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1. Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143-3.2 and G.S. 143-34.1, for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.~~

...."

#### **CLEAN WATER MANAGEMENT TRUST FUND BOARD OF TRUSTEES/STUDY STEWARDSHIP OF CONSERVATION EASEMENTS**

**SECTION 6.22.** The Clean Water Management Trust Fund Board of Trustees shall study management and stewardship of conservation easements. The Board shall report its findings and any recommendations to the Environmental Review Commission by December 1, 2005.

#### **COMMISSION ON STATE PROPERTY FUNDS**

**SECTION 6.23.** Of the funds appropriated to the Department of Administration for the 2005-2006 fiscal year, the Director of the Budget shall transfer two hundred thousand dollars (\$200,000) to the Commission on State Property established in Article 78 of Chapter 143 of the General Statutes.

#### **COLLABORATION AMONG DEPARTMENTS OF ADMINISTRATION, HEALTH AND HUMAN SERVICES, JUVENILE JUSTICE AND DELINQUENCY PREVENTION, AND PUBLIC INSTRUCTION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE**

**SECTION 6.24.(a)** School-Based Child and Family Team Initiative established. –

- (1) Purpose and duties. – There is established the School-Based Child and Family Team Initiative. The purpose of the Initiative is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. The Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other State agencies that provide services for children shall share responsibility and accountability to improve outcomes for these children and their families. The Initiative shall be based on the following principles:

- a. The development of a strong infrastructure of interagency collaboration;
  - b. One child, one team, one plan;
  - c. Individualized strengths-based care;
  - d. Accountability;
  - e. Cultural competence;
  - f. Children at risk of school failure or out-of-home placement may enter the system through any participating agency;
  - g. Services shall be specified, delivered, and monitored through a unified Child and Family Plan that is outcome-oriented and evaluation-based;
  - h. Services shall be the most efficient in terms of cost and effectiveness and shall be delivered in the most natural settings possible;
  - i. Out-of-home placements for children shall be a last resort and shall include concrete plans to bring the children back to a stable, permanent home, their schools, and their community; and
  - j. Families and consumers shall be involved in decision making throughout service planning, delivery, and monitoring.
- (2) Program goals and services. – In order to ensure that children receiving services are appropriately served, the affected State and local agencies shall:
- a. Increase capacity in the school setting to address the academic, health, mental health, social, and legal needs of children.
  - b. Ensure that children receiving services are screened initially to identify needs and assessed periodically to determine progress and sustained improvement in educational, health, safety, behavioral, and social outcomes.
  - c. Develop uniform screening mechanisms and a set of outcomes that are shared across affected agencies to measure children's progress in home, school, and community settings.
  - d. Promote practices that are known to be effective based upon research or national best practice standards.
  - e. Review services provided across affected State agencies to ensure that children's needs are met.
  - f. Eliminate cost shifting and facilitate cost-sharing among governmental agencies with respect to service development, service delivery, and monitoring for participating children and their families.
  - g. Participate in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and

health, director of the local management entity, the chief district court judge, and the chief district court counselor.

- (3) Local level responsibilities. – In coordination with the North Carolina Child and Family Leadership Council (Council), the local board of education shall establish the School-Based Child and Family Team Initiative (Initiative) at designated schools and shall appoint the Child and Family Team Leaders who shall be a school nurse and a school social worker. Each local management entity that has any selected schools in its catchment area shall appoint a Care Coordinator, and any department of social services that has a selected school in its catchment area shall appoint a Child and Family Teams Facilitator. The Care Coordinators and Child and Family Team Facilitators shall have as their sole responsibility working with the selected schools in their catchment areas and shall provide training to school-based personnel, as required. The Child and Family Team Leaders shall identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Based on the screening results, responsibility for developing, convening, and implementing the Child and Family Team Initiative is as follows:

- a. School personnel shall take the lead role for those children and their families whose primary unmet needs are related to academic achievement.
- b. The local management entity shall take the lead role for those children and their families whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
- c. The local department of public health shall take the lead role for those children and their families whose primary unmet needs are health-related.
- d. Local departments of social services shall take the lead for those children and their families whose primary unmet needs are related to child welfare, abuse, or neglect.
- e. The chief district court counselor shall take the lead for those children and their families whose primary unmet needs are related to juvenile justice issues.

A representative from each named or otherwise identified publicly supported children's agency shall participate as a member of the Team as needed. Team members shall coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

- (4) Reporting requirements. – School-Based Child and Family Team Leaders shall provide data to the Council for inclusion in their report

to the North Carolina General Assembly. The report shall include the following:

- a. The number of and other demographic information on children screened and assigned to a team and a description of the services needed by and provided to these children;
  - b. The number of and information about children assigned to a team who are placed in programs or facilities outside the child's home or outside the child's county and the average length of stay in residential treatment;
  - c. The amount and source of funds expended to implement the Initiative;
  - d. Information on how families and consumers are involved in decision making throughout service planning, delivery, and monitoring;
  - e. Other information as required by the Council to evaluate success in local programs and ensure appropriate outcomes; and
  - f. Recommendations on needed improvements.
- (5) Local advisory committee. – In each county with a participating school, the superintendent of the local LEA shall either identify an existing cross agency collaborative or council, or shall form a new group, to serve as a local advisory committee to work with the Initiative. Newly formed committees shall be chaired by the superintendent and one other member of the committee to be elected by the committee. The local advisory committee shall include the directors of the county departments of social services and health, the directors of the local management entity, the chief district court judge, the chief district court counselor, and representatives of other agencies providing services to children, as designated by the Committee. The members of the Committee shall meet as needed to monitor and support the successful implementation of the School-Based Child and Family Team Initiative.

The Local Child and Family Team Advisory Committee may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

**SECTION 6.24.(b)** North Carolina Child and Family Leadership Council. –

- (1) Leadership Council established; location. – There is established the North Carolina Child and Family Leadership Council (Council). The Council shall be located within the Department of Administration for organizational and budgetary purposes.
- (2) Purpose. – The purpose of the Council is to review and advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure the active participation and collaboration in the Initiative by all State agencies and their local counterparts providing services to children in participating counties in order to

increase the academic success and reduce out-of-home and out-of-county placements of children at risk of academic failure.

- (3) Membership. – The Superintendent of Public Instruction and the Secretary of Health and Human Services shall serve as co-chairs of the Council. Council membership shall include the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chairman of the State Board of Education, the Director of the Administrative Office of the Courts, and other members as appointed by the Governor.
- (4) The Council shall:
  - a. Sign an annual memorandum of agreement (MOA) among the named State agencies to define the purposes of the program and to ensure that program goals are accomplished.
  - b. Resolve State policy issues, as identified at the local level, which interfere with effective implementation of the School-Based Child and Family Team Initiative.
  - c. Direct the integration of resources, as needed, to meet goals and ensure that the Initiative promotes the most effective and efficient use of resources and eliminates duplication of effort.
  - d. Establish criteria for defining success in local programs and ensure appropriate outcomes.
  - e. Develop an evaluation process, based on expected outcomes, to ensure the goals and objectives of this Initiative are achieved.
  - f. Review progress made on integrating policies and resources across State agencies, reaching expected outcomes, and accomplishing other goals.
  - g. Report semiannually, on January 1 and July 1, on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division of the Legislative Services Office.

The Council may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

**SECTION 6.24.(c)** Department of Health and Human Services. – The Secretary of the Department of Health and Human Services shall ensure that all agencies within the Department collaborate in the development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

**SECTION 6.24.(d)** Department of Juvenile Justice and Delinquency Prevention. – The Secretary of the Department of Juvenile Justice and Delinquency Prevention shall ensure that all agencies within the Department collaborate in the

development and implementation of the School-Based Child and Family Team Initiative and provide all required support to ensure that the Initiative is successful.

**SECTION 6.24.(e)** Administrative Office of the Courts. – The Director of the Administrative Office of the Courts shall ensure that the Office collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

**SECTION 6.24.(f)** Department of Public Instruction. – The Superintendent of Public Instruction shall ensure that the Department collaborates in the development and implementation of the School-Based Child and Family Team Initiative and shall provide all required support to ensure that the Initiative is successful.

## **LIMIT DISPOSITION OF DOROTHEA DIX AND BLUE RIDGE ROAD PROPERTIES**

**SECTION 6.25.(a)** G.S. 146-27 reads as rewritten:

**"§ 146-27. The role of the Department of Administration in sales, leases, and rentals, rentals; approval by General Assembly.**

(a) General. – Every-Except as otherwise provided by this section, every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars (\$25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(c) Exceptions. – Notwithstanding any other provision of law, the following State-owned property shall not be sold, leased, rented, or otherwise disposed of without the prior approval of the General Assembly:

- (1) The property encompassing the Dorothea Dix Hospital campus.
- (2) The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District."

**SECTION 6.25.(b)** G.S. 143-341(4)g reads as rewritten:

**"§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

- ...
- (4) Real Property Control:

...

- g. To-Except as otherwise provided by this sub-subdivision, to allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State; provided that if the proposed reallocation is of land with an

appraised value of at least twenty-five thousand dollars (\$25,000), the reallocation may only be made after consultation with the Joint Legislative Commission on Governmental Operations. The authority granted in this paragraph shall not apply to the State Legislative Building and grounds or to the Legislative Office Building and grounds.

Notwithstanding any other provision of law, the following State-owned property shall not be allocated or reallocated without the prior approval of the General Assembly:

1. The property encompassing the Dorothea Dix Hospital campus.
2. The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District."

**SECTION 6.25.(c)** This section expires September 1, 2007.

#### **NO FUNDS BUDGETED FOR REPLACED EQUIPMENT**

**SECTION 6.27.** Once a State agency has purchased and installed equipment that performs the same function as equipment it leases, the agency shall not continue to budget funds for leased equipment that it no longer needs.

#### **HEALTH BENEFIT PLAN CO-PAYMENTS**

**SECTION 6.29.** G.S. 58-50-30(a3) reads as rewritten:

"(a3) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on the medically necessary treatment if performed or authorized by any other duly licensed physician. An insurer shall not impose as a limitation on treatment or level of coverage a co-payment amount charged to the insured for chiropractic services that is higher than the co-payment amount charged to the insured for the services of a duly licensed primary care physician for the same medically necessary treatment or condition."

#### **PLANNING FOR BETTER COLLECTION OF INFRASTRUCTURE INFORMATION**

**SECTION 6.33.(a)** The Office of State Budget and Management shall conduct a study to determine the best methods for collecting, managing, and providing access to information about technology, water, sewer, and other modern infrastructures needed to assist communities in becoming and remaining economically viable.



**SECTION 6.33.(b)** The Office of State Budget and Management shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly. The report shall include legislative proposals, including a proposal to define the term "infrastructure" in the General Statutes to include modern communication technologies.

## **ZERO-BASED BUDGET REVIEW**

**SECTION 6.34.(a)** The General Assembly finds that the traditional method of budgeting focuses only on expansion adjustments to the previous year's expenditures. This method of budgeting may no longer be sufficient to manage the competing demands of North Carolina's complex budget, its rapidly expanding education and health care expenditures, and the need to foster economic development. To meet the State's growing needs, it is necessary to examine new approaches to budgeting and management.

**SECTION 6.34.(b)** The Legislative Services Commission is hereby authorized to undertake no more than two zero-based budget reviews prior to the convening of the 2007 General Assembly. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall select the two departments for review.

**SECTION 6.34.(c)** In conducting a zero-based budget review, the Commission may consider the following:

- (1) The activities that comprise the department's budget, and a justification for the existence of each activity by reference to the constitution, federal and State statutes, case law, administrative rules, and departmental practices.
- (2) For each activity within the department, a quantitative estimate of any adverse impacts that could reasonably be expected should the activity be discontinued, together with a full description of the methods by which the expected adverse impacts were measured.
- (3) For each activity within the department, the account of expenditures that would be required to maintain the activity at the minimum level of service required by law.
- (4) For each activity within the department, an itemized account of expenditures required to maintain the activity at current levels of service, together with a concise statement of the quantity and quality of services being provided.
- (5) A ranking of all activities of the department that shows the relative contribution of each activity to the overall goals and purposes of the agency at current service levels.
- (6) Other issues the Commission deems appropriate for the budget review.

## **PAYROLL DEDUCTION FOR EMPLOYEES' ASSOCIATIONS**

**SECTION 6.35.** G.S. 143-3.3(g) reads as rewritten:

"(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed.  
– An employee of the State or any of its political subdivisions, institutions, departments, bureaus, agencies or commissions, or any of its local boards of education or community

colleges, who is a member of a domiciled employees' association that has at least 2,000 members, ~~the majority~~ 500 of whom are employees of the ~~State~~ State, a political subdivision of the State, or public school employees, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association.

An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education."

## **STUDY CONSOLIDATION OF STATE LABORATORIES**

**SECTION 6.36.(a)** The Office of State Budget and Management shall develop a plan to consolidate all State-funded laboratories. This plan will augment capital and space-allocation plans already developed for the new laboratories.

The State-funded laboratories to be considered for consolidation include the Public Health State Laboratory within the Department of Health and Human Services, the Agricultural Laboratory within the Department of Agriculture and Consumer Services, Veterinary Division, and the State Bureau of Investigation Crime Laboratories within the Department of Justice. The Office of State Budget and Management shall hire an independent consultant to conduct the study and develop the consolidation plan. The study shall include the feasibility of consolidating these laboratory functions and the identification of any duplicative functions.

**SECTION 6.36.(b)** The consolidation plan shall include a cost analysis for consolidating facilities and staff and eliminating duplicative services. The plan shall assure that confidentiality of shared data is not compromised and that the chain of custody of evidence is maintained for forensic evidence sent to the laboratory for analysis. The plan shall also assure that all laboratory functions will continue to receive certification in each field now certified and to conform with federal rules and regulations governing the laboratories' eligibility for federal grant funds. The plan shall include recommendations to privatize laboratory functions that can be more efficiently performed by non-State entities.

**SECTION 6.36.(c)** The Office of State Budget and Management shall submit a complete report of the study findings and recommendations to the General Assembly and the Fiscal Research Division no later than May 1, 2006.

## **CIVIL PENALTY AND FORFEITURE FUND**

**AVAILABILITY STATEMENT**

**SECTION 6.37.(a)** Availability. – The availability used to support appropriations made in this act from the Civil Penalty and Forfeiture Fund is based upon estimated collections of fines and forfeitures from the agencies and in the amounts listed below:

	<b>FY 2005-2006</b>	<b>FY 2006-2007</b>
Department of Revenue	\$ 80,000,000	\$ 85,000,000
Department of Transportation	\$ 15,000,000	\$ 15,000,000
Employment Security Commission	\$ 3,000,000	\$ 3,000,000
Department of Insurance	\$ 3,000,000	\$ 3,000,000
University of North Carolina	\$ 5,000,000	\$ 5,000,000
Other Agencies	\$ 14,500,000	\$ 14,500,000
<b>Total Funds Available</b>	<b>\$ 120,500,000</b>	<b>\$ 125,500,000</b>

**CIVIL PENALTY AND FORFEITURE FUNDS APPROPRIATIONS**

**SECTION 6.37.(b)** Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2007, as follows:

	<b>2005-2006</b>	<b>2006-2007</b>
School Technology Fund	\$ 18,000,000	\$ 18,000,000
State Public School Fund	\$ 102,500,000	\$ 107,500,000
Total Appropriation	\$ 120,500,000	\$ 125,500,000

Funds appropriated pursuant to this section shall be allotted, on behalf of the counties, to local school administrative units on a per pupil basis.

**SECTION 6.37.(c)** Shortfall. – If funds accruing to the Civil Penalty and Forfeiture Fund are not adequate for the appropriations set out in subsection (b) of this section, the Director of the Budget shall use funds available in the State Public School Fund for each fiscal year to offset the shortfall.

**SECTION 6.37.(d)** Unappropriated Funds. – Except as provided in subsection (f) of this section, if funds accruing to the Civil Penalty and Forfeiture Fund for the 2005-2006 fiscal year or the 2006-2007 fiscal year from agencies or pursuant to a settlement agreement or court order exceed the amounts appropriated in subsection (b) of this section, the excess funds shall remain in the Fund until appropriated by the General Assembly.

**SECTION 6.37.(e)** G.S. 105-164.44D does not apply in either the 2005-2006 or 2006-2007 fiscal years.

**SECTION 6.37.(f)** Overrealized Funds from the Department of Transportation. - If funds deposited in the Civil Penalty and Forfeiture Fund for the 2005-2006 fiscal year or the 2006-2007 fiscal year by the Department of Transportation exceed the amount projected in subsection (a) of this section, the Director of the Budget shall authorize the use of these excess funds to offset Highway Fund appropriations to

the Department of Public Instruction for the State Public School Fund. These excess funds are hereby appropriated from the Civil Penalty and Forfeiture Fund to the State Public School Fund for the 2005-2006 and the 2006-2007 fiscal years to offset such Highway Fund appropriations and shall be allocated in accordance with G.S. 115C-457.3, except that for the drivers education program it is allocated per pupil for those in that program in the public schools. The Director of the Budget shall decrease the amount of Highway Funds appropriated for driver education for the 2005-2006 and the 2006-2007 fiscal years by corresponding amounts.

**SECTION 6.37.(g)** G.S. 115C-457.3 reads as rewritten:

**"§ 115C-457.3. ~~Transfer of funds to the State School Technology Fund.~~Appropriation of moneys in the Fund.**

~~The Office of State Budget and Management shall transfer funds accruing to the Civil Penalty and Forfeiture Fund to the State School Technology Fund. These funds shall be allocated to counties on the basis of average daily membership. These funds shall be distributed to the counties to be allocated to the public schools, including charter schools, in the same manner as provided under G.S. 115C-452.~~

(a) The General Assembly shall appropriate moneys in the Civil Penalty and Forfeiture Fund in the Current Operations Appropriations Act. These appropriations shall be made to the State Public School Fund for allotment by the State Board of Education, on behalf of the counties, to local school administrative units on a per pupil basis in accordance with Article IX, Section 7(b) of the North Carolina Constitution.

(b) In accordance with subsection (a) of this section, the State Board of Education shall allocate these funds according to the allotted average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board pursuant to G.S. 115C-430."

**SECTION 6.37.(h)** G.S. 96-5(c) reads as rewritten:

"(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All ~~interest and penalties,~~interest, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this Chapter. Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Commission for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Commission business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Commission business; and (iii) the temporary stabilization of federal funds cash flow. The Employment Security Commission may use funds either from the Special Employment Security Commission Administration Fund created by this subsection or from federal funds, or from a combination of the two,

to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this section."

**SECTION 6.37.(i)** G.S. 96-6.1(a) reads as rewritten:

"(a) Contribution. – A mandatory training and reemployment contribution is levied upon employers at a percentage rate of the amount of the employer's unemployment insurance contributions due under G.S. 96-9. The rate is the lesser of (i) twenty percent (20%) or (ii) a percentage of the unemployment insurance contributions that yields an amount that, when added to the amount of the employer's unemployment insurance contributions due for the taxable period, is no greater than five and seven-tenths percent (5.7%) of wages for employment for the taxable period. The purpose of the training and reemployment contribution is to provide funds for Department of Community College training programs, Employment Security Commission reemployment services, administration and collection of the new contribution, and other needs of the State. The training and reemployment contribution is due and payable at the time and in the same manner as the unemployment insurance contributions under G.S. 96-9. The training and reemployment contribution does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Unemployment Insurance Fund equals or is less than nine hundred million dollars (\$900,000,000) or if at any time during the 12 months preceding August 1, the State unemployment rate rises above four and three-tenths percent (4.3%). The collection of the training and reemployment contribution, the assessment of interest and penalties on unpaid contributions under this section, the filing of judgment liens, and the

enforcement of the liens for unpaid contributions under this section are governed by the provisions of G.S. 96-10 where applicable.

Training and reemployment contributions collected under this section shall be credited to the Employment Security Commission Training and Employment Account created in this section, and refunds of these contributions shall be paid from the same account. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any interest ~~or penalties~~ collected on unpaid contributions under this section shall be credited to the Special Employment Security Administration Fund, and any interest ~~or penalties~~ refunded on contributions imposed by this section shall be paid from the same Fund."

**SECTION 6.37.(j)** G.S. 96-9(b)(3)j. reads as rewritten:

"j. A tax is imposed upon contributions at the rate of twenty percent (20%) of the amount of contributions due. The tax is due and payable at the time and in the same manner as the contributions. The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Reserve Fund equals or exceeds one hundred sixty-three million three hundred forty-nine thousand dollars (\$163,349,000), which is one percent (1%) of taxable wages for calendar year 1984. The collection of this tax, the assessment of interest and penalties on unpaid taxes, the filing of judgment liens, and the enforcement of the liens for unpaid taxes is governed by the provisions of G.S. 96-10 where applicable. Taxes collected under this subpart shall be credited to the Employment Security Commission Reserve Fund, and refunds of the taxes shall be paid from the same Fund. The clear proceeds of any civil penalties collected under this subpart shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Any interest ~~or penalties~~ collected on unpaid taxes shall be credited to the Special Employment Security Administration Fund, and any interest ~~or penalties~~ refunded on taxes imposed by this subpart shall be paid from the same Fund."

**SECTION 6.37.(k)** G.S. 96-10(a) reads as rewritten:

"(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Commission, shall bear interest at the rate set under G.S. 105-241.1(i) per month from and after that date until payment plus accrued interest is received by the Commission. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. ~~Penalties and interest~~ The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a

determination of liability by this Commission, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States."

**SECTION 6.37.(1)** G.S. 105-163.15 reads as rewritten:

**"§ 105-163.15. Failure by individual to pay estimated income tax; ~~penalty interest.~~**

(a) In the case of any underpayment of the estimated tax by an individual, the Secretary shall assess a ~~penalty interest~~ in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment.

...

(f) No ~~addition to the tax interest~~ shall be imposed under subsection (a) if the tax shown on the return for the taxable year reduced by the tax withheld under this Article is less than the amount set in section 6654(e) of the Code or if the individual did not have any liability for tax under Part 2 of Article 4 for the preceding taxable year.

...

(h) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no ~~addition to tax interest~~ shall be imposed under subsection (a) with respect to any underpayment of the fourth required installment for the taxable year.

(i) Notwithstanding subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

- (1) One installment. – The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable year. The amount of the installment payment must be the lesser of:
  - a. Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or
  - b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.
- (2) Exception. – If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no ~~addition to tax interest~~ is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.
- (3) Eligibility. – An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing,

including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return.

...."

**SECTION 6.37.(m)** G.S. 105-163.41 reads as rewritten:

**"§ 105-163.41. ~~Penalty for underpayment.~~ Underpayment.**

(a) Except as provided in subsection (d), if the amount of estimated tax paid by a corporation during the taxable year is less than the amount of tax imposed upon the corporation under Article 4 of this Chapter for the taxable year, the corporation must be assessed ~~an additional tax as a penalty~~ interest in an amount determined by multiplying the amount of the underpayment as determined under subsection (b), for the period of the underpayment as determined under subsection (c), by the percentage established as the rate of interest on assessments under G.S. 105-241.1(i) that is in effect for the period of the underpayment. For the purpose of this section, the amount of tax imposed under Article 4 of this Chapter is the net amount after subtracting the credits against the tax allowed by this Chapter other than the credit allowed by this Article.

...

(d) Except as provided in subdivision (5) of this subsection, the ~~penalty-interest~~ for underpayment imposed by this section shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installments equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax was equal to the least of:

- (1) The tax shown on the return of the corporation for the preceding taxable year, if the corporation filed a return for the preceding taxable year and the preceding year was a taxable year of 12 months;
- (2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or
- (3) An amount equal to ninety percent (90%) of the tax for the taxable year computed by placing on an annualized basis the taxable income:
  - a. For the first three months of the taxable year, in the case of the installment required to be paid in the 4th month;
  - b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the 6th month;
  - c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the 9th month; and
  - d. For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.
- (4) For purposes of this subdivision, the taxable income shall be placed on an annualized basis by multiplying by 12 the taxable income referred



to in the preceding sentence, and dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11 as the case may be) referred to in that sentence.

- (5) In the case of a large corporation, as defined in section 6655 of the Code, subdivisions (1) and (2) of this subsection shall not apply."

**SECTION 6.37.(n)** G.S. 105-236 reads as rewritten:

**"§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...."

**SECTION 6.37.(o)** G.S. 20-118(e) is amended by adding a new subdivision to read:

"(7) The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(p)** G.S. 20-309 is amended by adding a new subsection to read:

"(g) Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(q)** G.S. 20-79 is amended by adding a new subsection to read:

"(g) Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(r)** G.S. 116-44.4(m) reads as rewritten:

"(m) All moneys received pursuant to this ~~Part~~ Part, except for the clear proceeds of all civil penalties collected pursuant to subsection (h) of this section, shall be placed in a trust account in each constituent institution and may be used for any of the following purposes:

- (1) To defray the cost of administering and enforcing ordinances adopted under this Part;
- (2) To develop, maintain, and supervise parking areas and facilities;
- (3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;
- (4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;

- (5) Other purposes related to parking, traffic, and transportation on the campus.

The clear proceeds of all civil penalties collected pursuant to subsection (h) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(s)** G.S. 130A-248 reads as rewritten:

**"§ 130A-248. Regulation of food and lodging establishments.**

...

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of fifty dollars (\$50.00). ~~The Department shall charge an additional twenty five dollar (\$25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars (\$150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended.~~ The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of the fees collected under this subsection may be used to support State health programs and activities.

(d1) The Department shall charge a twenty-five dollar (\$25.00) late payment fee to any establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, that fails to pay the fee required by subsection (d) of this section within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars (\$150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection.

The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

...."

**SECTION 6.37.(t)** G.S. 130A-291.1(e2) reads as rewritten:

"(e2) A properly completed application for a permit and the annual fee under this section are due by 1 January of each year. The Department shall mail a notice of the annual fees to each permitted septage management firm and each individual who operates a septage treatment or disposal facility prior to 1 November of each calendar year. A late fee in the amount equal to fifty percent (50%) of the annual permit fee

under this section shall be submitted when a properly completed application and annual permit fee are not submitted by 1 January following the 1 November notice. The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(u)** G.S. 54-109.15(b) reads as rewritten:

**"§ 54-109.15. Reports.**

(a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied for that purpose. Additional reports may be required.

(b) Any credit union that neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall pay a late penalty to the Administrator of Credit Unions of seventy-five dollars (\$75.00) for each day the neglect continues. The Administrator of Credit Unions may revoke the certificate of incorporation and take possession of the assets and business of any credit union failing to pay a penalty imposed under this section after serving notice of at least 15 days upon the credit union of the proposed action. ~~Penalties collected under this section shall be credited to the special account established under G.S. 54-109.14.~~ The clear proceeds of penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 6.37.(v)** Effective July 1, 2006, G.S. 115C-457.2 reads as rewritten:

**"§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed ~~ten percent (10%)~~ twenty percent (20%) of the amount collected."

**SECTION 6.37.(w)** The Office of State Budget and Management shall develop a methodology for computing the actual costs of collection of civil penalties by State departments and agencies. This methodology shall apply to all State departments and agencies, effective July 1, 2006.

**REPORTS ON PERSONAL SERVICES CONTRACTS**

**SECTION 6.38.** G.S. 143-64.70 reads as rewritten:

**"§ 143-64.70. Personal service contracts – reporting requirements.**

(a) ~~By January 1, 2002, and quarterly thereafter,~~ January 1 of each year, each State department, agency, and institution shall make a detailed written report to the Office of State Budget and Management and the Office of State Personnel on its

utilization of personal services ~~contracts~~ contracts that have an annual expenditure greater than five thousand dollars (\$5,000). The report by each State department, agency, and institution shall include the following:

- (1) The total number of personal services contractors in service during the reporting period.
- (2) The type, duration, status, and cost of each contract.
- (3) The number of contractors utilized per contract.
- (4) A description of the functions and projects requiring contractual services.
- (5) The number of contractors for each function or project.
- (6) Identification of the State employee responsible for oversight of the performance of each contract and the number of contractors reporting to each contract manager or supervisor.
- (7) The budget code, fund number, and expenditure account number from which the contract funds were disbursed.

(b) By ~~March 15, 2002, and biannually thereafter,~~ March 15 of each year, the Office of State Budget and Management and the Office of State Personnel shall compile and analyze the information required under subsection (a) of this section and shall submit to the Joint Legislative Commission on Governmental Operations a detailed report on the type, number, duration, cost and effectiveness of State personal services contracts throughout State government."

## **PART VII. PUBLIC SCHOOLS**

### **TEACHER SALARY SCHEDULES**

**SECTION 7.1.(a)** Effective for the 2005-2006 school year, the Director of the Budget shall transfer from the Reserve for Experience Step Salary Increase for Teachers and Principals in Public Schools funds necessary to implement the teacher salary schedules set out in subsection (b) of this section and for longevity in accordance with subsection (d) of this section, including funds for the employer's retirement and social security contributions for all teachers whose salaries are supported from the State's General Fund.

These funds shall be allocated to individuals according to rules adopted by the State Board of Education.

**SECTION 7.1.(b)** The following monthly salary schedules shall apply for the 2005-2006 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

#### 2005-2006 Monthly Salary Schedule "A" Teachers

Years of Experience

"A" Teachers

NBPTS Certification

0	\$2,551	N/A
1	\$2,593	N/A
2	\$2,637	N/A
3	\$2,793	\$3,128
4	\$2,933	\$3,285
5	\$3,067	\$3,435
6	\$3,196	\$3,580
7	\$3,300	\$3,696
8	\$3,348	\$3,750
9	\$3,397	\$3,805
10	\$3,447	\$3,861
11	\$3,496	\$3,916
12	\$3,547	\$3,973
13	\$3,598	\$4,030
14	\$3,651	\$4,089
15	\$3,705	\$4,150
16	\$3,760	\$4,211
17	\$3,815	\$4,273
18	\$3,874	\$4,339
19	\$3,932	\$4,404
20	\$3,990	\$4,469
21	\$4,052	\$4,538
22	\$4,113	\$4,607
23	\$4,179	\$4,680
24	\$4,243	\$4,752
25	\$4,308	\$4,825
26	\$4,374	\$4,899
27	\$4,442	\$4,975
28	\$4,513	\$5,055
29+	\$4,584	\$5,134

2005-2006 Monthly Salary Schedule  
"M" Teachers

<u>Years of Experience</u>	<u>"M" Teachers</u>	<u>NBPTS Certification</u>
0	\$2,806	N/A
1	\$2,852	N/A
2	\$2,901	N/A
3	\$3,072	\$3,441
4	\$3,226	\$3,613
5	\$3,374	\$3,779
6	\$3,516	\$3,938

7	\$3,630	\$4,066
8	\$3,683	\$4,125
9	\$3,737	\$4,185
10	\$3,792	\$4,247
11	\$3,846	\$4,308
12	\$3,902	\$4,370
13	\$3,958	\$4,433
14	\$4,016	\$4,498
15	\$4,076	\$4,565
16	\$4,136	\$4,632
17	\$4,197	\$4,701
18	\$4,261	\$4,772
19	\$4,325	\$4,844
20	\$4,389	\$4,916
21	\$4,457	\$4,992
22	\$4,524	\$5,067
23	\$4,597	\$5,149
24	\$4,667	\$5,227
25	\$4,739	\$5,308
26	\$4,811	\$5,388
27	\$4,886	\$5,472
28	\$4,964	\$5,560
29+	\$5,042	\$5,647

**SECTION 7.1.(c)** Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

**SECTION 7.1.(d)** Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

**SECTION 7.1.(e)** The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on

the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

**SECTION 7.1.(f)** Speech pathologists who are certified as speech pathologists at the masters degree level and audiologists who are certified as audiologists at the masters degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

**SECTION 7.1.(g)** Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

**SECTION 7.1.(h)** As used in this section, the term "teacher" shall also include instructional support personnel.

**SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULE**

**SECTION 7.2.(a)** Effective for the 2005-2006 school year, the Director of the Budget shall transfer from the Reserve for Compensation Increases funds necessary to implement the salary schedules for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

**SECTION 7.2.(b)** The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2005-2006 fiscal year, commencing July 1, 2005, is as follows:

2005-2006 Principal and Assistant Principal Salary Schedules Classification					
Yrs. of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
0-4	\$3,259	-	-	-	-

5	\$3,408	-	-	-	-
6	\$3,551	-	-	-	-
7	\$3,666	-	-	-	-
8	\$3,719	\$3,719	-	-	-
9	\$3,773	\$3,773	-	-	-
10	\$3,829	\$3,829	\$3,885	-	-
11	\$3,885	\$3,885	\$3,941	-	-
12	\$3,941	\$3,941	\$3,997	\$4,056	-
13	\$3,997	\$3,997	\$4,056	\$4,115	\$4,178
14	\$4,056	\$4,056	\$4,115	\$4,178	\$4,240
15	\$4,115	\$4,115	\$4,178	\$4,240	\$4,303
16	\$4,178	\$4,178	\$4,240	\$4,303	\$4,368
17	\$4,240	\$4,240	\$4,303	\$4,368	\$4,432
18	\$4,303	\$4,303	\$4,368	\$4,432	\$4,502
19	\$4,368	\$4,368	\$4,432	\$4,502	\$4,570
20	\$4,432	\$4,432	\$4,502	\$4,570	\$4,643
21	\$4,502	\$4,502	\$4,570	\$4,643	\$4,713
22	\$4,570	\$4,570	\$4,643	\$4,713	\$4,786
23	\$4,643	\$4,643	\$4,713	\$4,786	\$4,860
24	\$4,713	\$4,713	\$4,786	\$4,860	\$4,936
25	\$4,786	\$4,786	\$4,860	\$4,936	\$5,013
26	\$4,860	\$4,860	\$4,936	\$5,013	\$5,094
27	\$4,936	\$4,936	\$5,013	\$5,094	\$5,195
28	\$5,013	\$5,013	\$5,094	\$5,195	\$5,299
29	\$5,094	\$5,094	\$5,195	\$5,299	\$5,406
30	\$5,195	\$5,195	\$5,299	\$5,406	\$5,514
31	\$5,299	\$5,299	\$5,406	\$5,514	\$5,624
32	-	\$5,406	\$5,514	\$5,624	\$5,736
33	-	-	\$5,624	\$5,736	\$5,851
34	-	-	\$5,736	\$5,851	\$5,969
35	-	-	-	\$5,969	\$6,087
36	-	-	-	\$6,087	\$6,210
37	-	-	-	-	\$6,334

2005-2006  
Principal and Assistant Principal Salary Schedules  
Classification

Yrs. of Exp	PrinV (44-54)	PrinVI (55-65)	PrinVII (66-100)	PrinVIII (101+)
0-14	\$4,303			
15	\$4,368			
16	\$4,432	\$4,502		



17	\$4,502	\$4,570	\$4,713	
18	\$4,570	\$4,643	\$4,786	\$4,860
19	\$4,643	\$4,713	\$4,860	\$4,936
20	\$4,713	\$4,786	\$4,936	\$5,013
21	\$4,786	\$4,860	\$5,013	\$5,094
22	\$4,860	\$4,936	\$5,094	\$5,195
23	\$4,936	\$5,013	\$5,195	\$5,299
24	\$5,013	\$5,094	\$5,299	\$5,406
25	\$5,094	\$5,195	\$5,406	\$5,514
26	\$5,195	\$5,299	\$5,514	\$5,624
27	\$5,299	\$5,406	\$5,624	\$5,736
28	\$5,406	\$5,514	\$5,736	\$5,851
29	\$5,514	\$5,624	\$5,851	\$5,969
30	\$5,624	\$5,736	\$5,969	\$6,087
31	\$5,736	\$5,851	\$6,087	\$6,210
32	\$5,851	\$5,969	\$6,210	\$6,334
33	\$5,969	\$6,087	\$6,334	\$6,461
34	\$6,087	\$6,210	\$6,461	\$6,590
35	\$6,210	\$6,334	\$6,590	\$6,721
36	\$6,334	\$6,461	\$6,721	\$6,855
37	\$6,461	\$6,590	\$6,855	\$6,992
38	\$6,590	\$6,721	\$6,992	\$7,132
39		\$6,855	\$7,132	\$7,274
40		\$6,992	\$7,274	\$7,420
41			\$7,420	\$7,568

**SECTION 7.2.(c)** The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

**SECTION 7.2.(d)** A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

**SECTION 7.2.(e)** Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

**SECTION 7.2.(f)** Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

**SECTION 7.2.(g)** If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

**SECTION 7.2.(h)** Participants in an approved full-time masters in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the masters program. For the 2005-2006 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the

intern participates in a full-time masters in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

**SECTION 7.2.(i)** During the 2005-2006 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

### **CENTRAL OFFICE SALARIES**

**SECTION 7.3.(a)** The monthly salary ranges that follow apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 2005-2006 fiscal year, beginning July 1, 2005.

School Administrator I	\$2,932	\$5,506
School Administrator II	\$3,112	\$5,840
School Administrator III	\$3,303	\$6,195
School Administrator IV	\$3,436	\$6,442
School Administrator V	\$3,574	\$6,702
School Administrator VI	\$3,792	\$7,108
School Administrator VII	\$3,945	\$7,394

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee.

**SECTION 7.3.(b)** The monthly salary ranges that follow apply to public school superintendents for the 2005-2006 fiscal year, beginning July 1, 2005.

Superintendent I	\$4,187	\$7,844
Superintendent II	\$4,445	\$8,318
Superintendent III	\$4,716	\$8,825
Superintendent IV	\$5,005	\$9,360
Superintendent V	\$5,312	\$9,931

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

**SECTION 7.3.(c)** Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees under the State Personnel Act.

**SECTION 7.3.(d)** Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and

finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for under this section.

**SECTION 7.3.(e)** The State Board of Education shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

**SECTION 7.3.(f)** The annual salary increase for all permanent full-time personnel paid from the Central Office Allotment who work a nine-, 10-, 11-, or 12-month work year schedule shall be the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), commencing July 1, 2005. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing salary increases to these personnel.

#### **NONCERTIFIED PERSONNEL SALARY**

**SECTION 7.4.(a)** The annual salary increase for permanent, full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), commencing July 1, 2005.

**SECTION 7.4.(b)** Local boards of education shall increase the rates of pay for such employees who were employed for all or part of fiscal year 2004-2005 and who continue their employment for fiscal year 2005-2006 by providing an annual salary increase for employees of the greater of eight hundred fifty dollars (\$850.00) or two percent (2%).

For part-time employees, the pay increase shall be pro rata based on the number of hours worked.

**SECTION 7.4.(c)** The State Board of Education may adopt salary ranges for noncertified personnel to support increases of the greater of eight hundred fifty dollars (\$850.00) or two percent (2%) for the 2005-2006 fiscal year.

**SECTION 7.4.(d)** For the 2005-2006 fiscal year, permanent full-time employees who work a nine-, 10-, 11-, or 12-month work year schedule shall receive the eight hundred fifty dollars (\$850.00) or the two percent (2%) annual increase provided by this act, whichever is greater.

#### **BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES**

**SECTION 7.5.** Effective July 1, 2005, any permanent certified personnel employed on July 1, 2003, and paid on the teacher salary schedule with 29+ years of experience shall receive a one-time bonus equivalent to the average increase of the 26 to 29 year steps. Effective July 1, 2005, any permanent personnel employed on July 1, 2004, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%).

For permanent part-time personnel, the one-time bonus shall be adjusted pro rata. Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

## **SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES**

**SECTION 7.6.(a)** Funds for Supplemental Funding. – The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement. Therefore, funds are appropriated to State Aid to Local School Administrative Units for the 2005-2006 fiscal year and the 2006-2007 fiscal year to be used for supplemental funds for the schools.

**SECTION 7.6.(b)** Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks; (ii) for salary supplements for instructional personnel and instructional support personnel; and (iii) to pay an amount not to exceed ten thousand dollars (\$10,000) of the plant operation contract cost charged by the Department of Public Instruction for services.

Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

**SECTION 7.6.(c)** Definitions. – As used in this section:

- (1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.
- (2) "Anticipated total county revenue availability" means the sum of the:
  - a. Anticipated county property tax revenue availability,
  - b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
  - c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and
  - d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.

- (3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.
- (4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.
- (5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.
- (6) "County-adjusted property tax base" shall be computed as follows:
  - a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
  - b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
  - c. Add to the resulting amount the:
    1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
    2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
    3. Personal property value for the county.
- (7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.
- (8) "County wealth as a percentage of State average wealth" shall be computed as follows:
  - a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
  - b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,
  - c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
  - d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

- (9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
- (10) "Effective State average tax rate" means the average of effective county tax rates for all counties.
- (10a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (11) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.
- (12) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (13) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (14) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.
- (14a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (15) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

**SECTION 7.6.(d)** Eligibility for Funds. – Except as provided in subsection (h) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

**SECTION 7.6.(e)** Allocation of Funds. – Except as provided in subsection (g) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given

the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county wealth as a percentage of State average wealth by the State average current expense appropriations per student.)

The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units.

If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

**SECTION 7.6.(f)** Formula for Distribution of Supplemental Funding Pursuant to This Section Only. – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

**SECTION 7.6.(g)** Minimum Effort Required. – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only.

This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

**SECTION 7.6.(h)** Nonsupplant Requirement. – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:



- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

**SECTION 7.6.(i) Reports.** – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

**SECTION 7.6.(j) Department of Revenue Reports.** – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

### **SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING**

**SECTION 7.7.(a) Funds for Small School Systems.** – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position.
- (2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study.
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.

- (5) Provide a base for the consolidated funds allotment of at least seven hundred forty thousand seventy-four dollars (\$740,074), excluding textbooks for the 2005-2006 fiscal year and a base of seven hundred forty thousand seventy-four dollars (\$740,074) for the 2006-2007 fiscal year.
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

**SECTION 7.7.(b) Nonsupplant Requirement.** – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2005-2007 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

**SECTION 7.7.(c) Phase-Out Provisions.** – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for five years after the unit becomes ineligible.

**SECTION 7.7.(d) Definitions.** – As used in this section:

- (1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.
- (2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted

average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.

- (2a) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (3) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (4) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.
- (4a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

**SECTION 7.7.(e) Reports.** – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2006, if it determines that counties have supplanted funds.

**SECTION 7.7.(f) Use of Funds.** – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7. Local boards of education shall report to the State Board of Education on an annual basis on funds used for this purpose, and the State Board shall report this information to the Joint Legislative Education Oversight Committee. These reports shall specify how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools.

## **DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING**

**SECTION 7.8.(a)** Funds are appropriated in this act to address the capacity needs of local school administrative units to meet the needs of disadvantaged students. Each local school administrative unit shall use funds allocated to it for disadvantaged

student supplemental funding to implement a plan jointly developed by the unit and the LEA Assistance Program team. The plan shall be based upon the needs of students in the unit not achieving grade-level proficiency. The plan shall detail how these funds shall be used in conjunction with all other supplemental funding allotments such as Low-Wealth, Small County, At-Risk Student Services/Alternative Schools, and Improving Student Accountability, to provide instructional and other services that meet the educational needs of these students. Prior to the allotment of disadvantaged student supplemental funds, the plan shall be approved by the State Board of Education.

Funds received for disadvantaged student supplemental funding shall be used, consistent with the policies and procedures adopted by the State Board of Education, only to:

- (1) Provide instructional positions or instructional support positions and/or professional development;
- (2) Provide intensive in-school and/or after-school remediation;
- (3) Purchase diagnostic software and progress-monitoring tools; and
- (4) Provide funds for teacher bonuses and supplements. The State Board of Education shall set a maximum percentage of the funds that may be used for this purpose.

The State Board of Education may require districts receiving funding under the Disadvantaged Student Supplemental Fund to purchase the Education Value Added Assessment System in order to provide in-depth analysis of student performance and help identify strategies for improving student achievement. This data shall be used exclusively for instructional and curriculum decisions made in the best interest of children and for professional development for their teachers and administrators.

**SECTION 7.8.(b)** Funds are appropriated in this act to evaluate the Disadvantaged Student Supplemental Funding Initiatives and Low-Wealth Initiatives. The State Board of Education shall use these funds to:

- (1) Evaluate the strategies implemented by local school administrative units with Disadvantaged Student Supplemental Funds and Low-Wealth Funds and assess their impact on student performance; and
- (2) Evaluate the efficiency and effectiveness of the technical assistance and support provided to local school administrative units by the Department of Public Instruction.

The State Board of Education shall report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by February 15, 2006, and by January 15 of each subsequent year.

## **STUDENTS WITH LIMITED ENGLISH PROFICIENCY**

**SECTION 7.9.(a)** The State Board of Education shall develop guidelines for identifying and providing services to students with limited proficiency in the English language.

The State Board shall allocate these funds to local school administrative units and to charter schools under a formula that takes into account the average percentage of students in the units or the charters over the past three years who have limited English proficiency. The State Board shall allocate funds to a unit or a charter school only if (i) average daily membership of the unit or the charter school includes at least 20 students with limited English proficiency or (ii) students with limited English proficiency comprise at least two and one-half percent (2.5%) of the average daily membership of the unit or charter school. For the portion of the funds that is allocated on the basis of the number of identified students, the maximum number of identified students for whom a unit or charter school receives funds shall not exceed ten and six-tenths percent (10.6%) of its average daily membership.

Local school administrative units shall use funds allocated to them to pay for classroom teachers, teacher assistants, tutors, textbooks, classroom materials/instructional supplies/equipment, transportation costs, and staff development of teachers for students with limited English proficiency.

A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds.

**SECTION 7.9.(b)** The Department of Public Instruction shall prepare a current head count of the number of students classified with limited English proficiency by December 1 of each year.

Students in the head count shall be assessed at least once every three years to determine their level of English proficiency. A student who scores "superior" on the standard English language proficiency assessment instrument used in this State shall not be included in the head count of students with limited English proficiency.

#### **FLEXIBILITY FOR THE HIGHEST PRIORITY ELEMENTARY SCHOOLS**

**SECTION 7.10.** The State Board of Education may allow high priority schools that have made high growth for three consecutive years to be removed from the list of high priority schools. If a local board of education chooses to have a school removed from the list of high priority schools, the additional high priority funding for that school shall be discontinued.

#### **AT-RISK STUDENT SERVICES/ALTERNATIVE SCHOOLS**

**SECTION 7.11.** The State Board of Education may use up to two hundred thousand dollars (\$200,000) of the funds in the Alternative Schools/At-Risk Student allotment each year for the 2005-2006 fiscal year and for the 2006-2007 fiscal year to implement G.S. 115C-12(24).

#### **FUNDS FOR CHILDREN WITH DISABILITIES**

**SECTION 7.12.** The State Board of Education shall allocate funds for children with disabilities on the basis of two thousand eight hundred thirty-eight dollars and thirty-nine cents (\$2,838.39) per child for a maximum of 168,602 children for the 2005-2006 school year. Each local school administrative unit shall receive funds for the

lesser of (i) all children who are identified as children with disabilities or (ii) twelve and five-tenths percent (12.5%) of the 2005-2006 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

## **FUNDS FOR ACADEMICALLY GIFTED CHILDREN**

**SECTION 7.13.** The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of nine hundred twenty-six dollars and fifty-five cents (\$926.55) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2005-2006 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 55,895 children for the 2005-2006 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

## **EXPENDITURE OF FUNDS TO IMPROVE STUDENT ACCOUNTABILITY**

**SECTION 7.14.(a)** Funds appropriated for the 2005-2006 and 2006-2007 fiscal years for Student Accountability Standards shall be used to assist students to perform at or above grade level in reading and mathematics in grades 3-8 as measured by the State's end-of-grade tests. The State Board of Education shall allocate these funds to LEAs based on the number of students who score at Level I or Level II on either reading or mathematics end-of-grade tests in grades 3-8. Funds in the allocation category shall be used to improve the academic performance of (i) students who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 or (ii) students who are performing at Level I or II on the writing tests in grades 4 and 7. These funds may also be used to improve the academic performance of students who are performing at Level I or II on the high school end-of-course tests. These funds shall not be transferred to other allocation categories or otherwise used for other purposes. Except as otherwise provided by law, local boards of education may transfer other funds available to them into this allocation category.

The principal of a school receiving these funds, in consultation with the faculty and the site-based management team, shall implement plans for expending these funds to improve the performance of students.

Local boards of education are encouraged to use federal funds such as Title I Comprehensive School Reform Development Funds and to examine the use of State funds to ensure that every student is performing at or above grade level in reading and mathematics.

These funds shall be allocated to local school administrative units for the 2005-2006 fiscal year within 30 days of the date this act becomes law.

**SECTION 7.14.(b)** Funds appropriated for Student Accountability Standards shall not revert at the end of each fiscal year but shall remain available for expenditure until August 31 of the subsequent fiscal year.

#### **LITIGATION RESERVE FUNDS**

**SECTION 7.15.** The State Board of Education may expend up to five hundred thousand dollars (\$500,000) each year for the 2005-2006 and 2006-2007 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to pending litigation.

#### **BASE BUDGET REDUCTION TO DEPARTMENT OF PUBLIC INSTRUCTION**

**SECTION 7.16.** Notwithstanding any other provision of law, the Department of Public Instruction may use salary reserve funds and other funds and may transfer funds within the Department's continuation budget to implement budget reductions for the 2005-2006 fiscal year.

#### **REPLACEMENT SCHOOL BUSES FUNDS**

**SECTION 7.17.(a)** The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

- (1) The local board of education shall use the funds only to make the first, second, or third year's payment on a financing contract entered into pursuant to G.S. 115C-528.
- (2) The term of a financing contract entered into under this section shall not exceed three years.
- (3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.
- (4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.
- (5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.
- (6) Any other condition the State Board of Education considers appropriate.

**SECTION 7.17.(b)** Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

## **EXPENDITURES FOR DRIVING ELIGIBILITY CERTIFICATES**

**SECTION 7.18.** G.S. 115C-12(28) reads as rewritten:

### **"§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

...

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates.  
– The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

- a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.
- b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.
- c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:
  1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
  2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

- d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.
- e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.



The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates."

#### **DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM**

**SECTION 7.19.(a)** If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

**SECTION 7.19.(b)** If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

#### **CHARTER SCHOOL ADVISORY COMMITTEE/CHARTER SCHOOL EVALUATION**

**SECTION 7.20.** The State Board of Education may spend up to fifty thousand dollars (\$50,000) a year from State Aid to Local School Administrative Units for the 2005-2006 and 2006-2007 fiscal years to continue support of a charter school advisory committee and to continue to evaluate charter schools.

#### **MENTOR TEACHER FUNDS MAY BE USED FOR FULL-TIME MENTORS**

**SECTION 7.21.(a)** The State Board of Education shall grant flexibility to a local board of education regarding the use of mentor funds to provide mentoring support, provided the local board submits a detailed plan on the use of the funds to the State Board and the State Board approves that plan. The plan shall include information on how all mentors in the local school administrative unit have been or will be adequately trained to provide mentoring support.

Local boards of education shall use funds allocated for mentor teachers to provide mentoring support to all State-paid newly certified teachers, second-year teachers who were assigned mentors during the prior school year, and entry-level instructional support personnel who have not previously been teachers.

**SECTION 7.21.(b)** The State Board, after consultation with the Professional Teaching Standards Commission, shall adopt standards for mentor training.

**SECTION 7.21.(c)** Each local board of education with a plan approved pursuant to subsection (a) of this section shall report to the State Board on the impact of its mentor program on teacher retention. The State Board shall analyze these reports to determine the characteristics of mentor programs that are most effective in retaining teachers and shall report its findings to the Joint Legislative Education Oversight Committee by October 15, 2006.

**SECTION 7.21.(d)** In addition to the report required in subsection (c) of this section, the State shall also evaluate the effectiveness of a representative sample of local mentor programs and report on its findings to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2006. The evaluation shall focus on quantitative evidence, quality of service delivery, and satisfaction of those involved. The report shall include the results of the evaluation and recommendations both for improving mentor programs generally and for an appropriate level of State support for mentor programs.

## **VISITING INTERNATIONAL EXCHANGE TEACHERS**

**SECTION 7.22.(a)** G.S. 115C-105.25(b) is amended by adding a new subdivision to read:

"(5a) Positions allocated for classroom teachers may be converted to dollar equivalents to contract for visiting international exchange teachers. These positions shall be converted at the statewide average salary for classroom teachers, including benefits. The converted funds shall be used only to cover the costs associated with bringing visiting international exchange teachers to the local school administrative unit through a State-approved visiting international exchange teacher program and supporting the visiting exchange teachers."

**SECTION 7.22.(b)** The Visiting International Faculty Program is a State-approved visiting international exchange teacher program.

## **FUNDS TO IMPLEMENT THE ABCS OF PUBLIC EDUCATION**

**SECTION 7.23.(a)** The State Board of Education shall use funds appropriated in this act for State Aid to Local School Administrative Units to provide

incentive funding for schools that met or exceeded the projected levels of improvement in student performance during the 2004-2005 school year, in accordance with the ABCs of Public Education Program. In accordance with State Board of Education policy:

- (1) Incentive awards in schools that achieve higher than expected improvements may be:
  - a. Up to one thousand five hundred dollars (\$1,500) for each teacher and for certified personnel; and
  - b. Up to five hundred dollars (\$500.00) for each teacher assistant.
- (2) Incentive awards in schools that meet the expected improvements may be:
  - a. Up to seven hundred fifty dollars (\$750.00) for each teacher and for certified personnel; and
  - b. Up to three hundred seventy-five dollars (\$375.00) for each teacher assistant.

**SECTION 7.23.(b)** The State Board of Education may use funds appropriated to the State Public School Fund for assistance teams to low-performing schools.

#### **LEA ASSISTANCE PROGRAM**

**SECTION 7.24.** Of the funds appropriated to the State Public School Fund, the State Board of Education shall use five hundred thousand dollars (\$500,000) for the 2005-2006 fiscal year and five hundred thousand dollars (\$500,000) for the 2006-2007 fiscal year to provide assistance to the State's low-performing Local School Administrative Units (LEAs) and to assist schools in meeting adequate yearly progress in each subgroup identified in the No Child Left Behind Act of 2001. The State Board of Education shall report to the Office of State Budget and Management, the Fiscal Research Division, and the Joint Legislative Education Oversight Committee on the expenditure of these funds by May 15, 2006, and by December 15, 2007. The report shall contain: (i) the criteria for selecting LEAs and schools to receive assistance, (ii) measurable goals and objectives for the assistance program, (iii) an explanation of the assistance provided, (iv) findings from the assistance program, (v) actual expenditures by category, (vi) recommendations for the continuance of this program, and (vii) any other information the State Board deems necessary. These funds shall not revert at the end of each fiscal year but shall remain available until expended for this purpose.

#### **FUNDS FOR THE TESTING AND IMPLEMENTATION OF THE NEW STUDENT INFORMATION SYSTEM**

**SECTION 7.25.(a)** Funds appropriated for the Uniform Education Reporting System shall not revert at the end of the 2005-2006 and 2006-2007 fiscal years but shall remain available until expended.

**SECTION 7.25.(b)** This section becomes effective June 30, 2005.

#### **LEA SALES TAX REFUND REPORTING**

**SECTION 7.27.(a)** G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.

This subsection applies only to the following governmental entities:

- (1) A county.
- (2) A city as defined in G.S. 160A-1.
- (2a) A consolidated city-county as defined in G.S. 160B-2.
- (2b) A local school administrative unit.
- (2c) A joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf.
- (3) A metropolitan sewerage district or a metropolitan water district in this State.
- (4) A water and sewer authority created under Chapter 162A of the General Statutes.
- (5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
- (6) A sanitary district.
- (7) A regional solid waste management authority created pursuant to G.S. 153A-421.
- (8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
- (9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
- (10) A regional council of governments created pursuant to G.S. 160A-470.
- (11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
- (12) A regional planning commission created pursuant to G.S. 153A-391.
- (13) A regional sports authority created pursuant to G.S. 160A-479.

- (14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
- (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
- (15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
- (16) A local airport authority that was created pursuant to a local act of the General Assembly.
- (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
- (18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
- (19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
- (20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
- (21) The University of North Carolina Health Care System.
- (22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

**SECTION 7.27.(b)** G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
- (32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly."

**SECTION 7.27.(c)** In addition to the report required under G.S. 105-164.14(c), as amended by this section, the Secretary of Revenue shall make a report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly within 30 days after this act becomes law of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of G.S. 105-164.14(c) during the 2002-2003, 2003-2004, and 2004-2005 fiscal years.

## **REVIEW OF STANDARDS FOR MASTERS IN SCHOOL ADMINISTRATION PROGRAMS**

**SECTION 7.28.** The State Board of Education, in consultation with the Board of Governors of The University of North Carolina, shall review standards for

Masters in School Administration programs to ensure that appropriate competencies related to teacher retention, teacher evaluations, teacher support programs, and teacher effectiveness are included and emphasized.

## **EVALUATION OF SCHOOL PRINCIPALS**

**SECTION 7.29.** Chapter 115C of the General Statutes is amended by adding a new section to read:

### **"§ 115C-286.1. Evaluations of principals.**

Local school administrative units shall evaluate all principals and assistant principals at least once each year. Either the superintendent or the superintendent's designee shall conduct the evaluations.

The State Board of Education shall ensure that the standards and criteria for the evaluations include the accountability measures of teacher retention, teacher support, and school climate. The State Board shall revise its evaluation instruments to include these measures. A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board."

## **PLANNING TIME FOR TEACHERS**

**SECTION 7.30.** The State Board of Education shall report on best practices from North Carolina schools for providing a minimum of five hours per week within the instructional day for planning, collaborating with colleagues and parents, and professional development, especially within elementary school schedules. The State Board shall submit its report to the Education Cabinet and to the Joint Legislative Education Oversight Committee by January 15, 2006.

The State Board shall disseminate this information about best practices to schools and school systems across the State.

## **LEARN AND EARN HIGH SCHOOLS**

**SECTION 7.32.(a)** Funds are appropriated in this act for the Learn and Earn high school workforce development program. The purpose of the program is to create rigorous and relevant high school options that provide students with the opportunity and assistance to earn an associate degree or two years of college credit by the conclusion of the year after their senior year in high school. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

**SECTION 7.32.(b)** These funds shall be used to establish new high schools in which a local school administrative unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the needs of participating employers.

Funds shall not be allotted until Learn and Earn high schools are certified as operational.

**SECTION 7.32.(c)** During the first year of its operation, a high school established under G.S. 115C-238.50 shall be allotted a principal regardless of the number of State-paid teachers assigned to the school or the number of students enrolled in the school. The budget flexibility authorized by G.S. 115C-105.25 does not apply to these positions.

**SECTION 7.32.(d)** The State Board of Education, in consultation with the State Board of Community Colleges and The University of North Carolina Board of Governors, shall conduct an annual evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; (ii) recommended statutory and policy changes; and (iii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each fiscal year.

## **FLEXIBILITY FOR HIGH SCHOOL INNOVATION**

**SECTION 7.33.(a)** Part 9 of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 9. Cooperative Innovative High School Programs.

"§ 115C-238.50. **Purpose.**

(a) The purpose of this Part is to authorize ~~boards of trustees of community colleges and local boards of education to jointly establish~~ local boards of education to jointly establish with one or more boards of trustees cooperative innovative programs in high schools and ~~community colleges~~ or universities that will expand students' opportunities for educational success through high quality instructional programming. These cooperative innovative high school programs shall target:

- (1) High school students who are at risk of dropping out of school before attaining a high school diploma; or
- (2) High school students who would benefit from accelerated academic instruction.

(b) All the cooperative innovative high school programs established under this Part shall:

- (1) Prepare students adequately for future learning in the workforce or in an institution of higher education.
- (2) Expand students' educational opportunities within the public school system.
- (3) Be centered on the core academic standards represented by the college preparatory or tech prep program of study as defined by the State Board of Education.
- (4) Encourage the cooperative or shared use of resources, personnel, and facilities between public schools and ~~community colleges~~ colleges or universities, or both.

- (5) Integrate and emphasize both academic and technical skills necessary for students to be successful in a more demanding and changing workplace.
  - (6) Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing so that parents and students can make responsible decisions regarding course taking and can track the students' academic progress and success.
  - (7) Be held accountable for meeting measurable student achievement results.
  - (8) Encourage the use of different and innovative teaching methods.
  - (9) Establish joint institutional responsibility and accountability for support of students and their success.
  - (10) Effectively utilize existing funding sources for high school, ~~community-college~~, university, and vocational programs and actively pursue new funding from other sources.
  - (11) Develop methods for early identification of potential participating students in the middle grades and through high school.
  - (12) Reduce the percentage of students needing remedial courses upon their initial entry from high school into a college or university.
- (c) Programs developed under this Part that target students who are at risk of dropping out of high school before attaining a high school diploma shall:
- (1) Provide these students with the opportunity to graduate from high school possessing the core academic skills needed for postsecondary education and high-skilled employment.
  - (2) Enable students to complete a technical or academic program in a field that is in high demand and has high wages.
  - (3) Set and achieve goals that significantly reduce dropout rates and raise high school and ~~community-college~~ retention, certification, and degree completion rates.
  - (4) Enable students who complete these programs to pass employer exams, if applicable.
- (d) Cooperative innovative high school programs that offer accelerated learning programs shall:
- (1) Provide a flexible, customized program of instruction for students who would benefit from accelerated, higher level coursework or early graduation from high school.
  - (2) Enable students to obtain a high school diploma in less than four ~~years~~ and years, to begin or complete an associate degree ~~program or program~~, to master a certificate or vocational ~~program-program~~, or to earn up to two years of college credit.
  - (3) Offer a college preparatory academic core and in-depth studies in a career or technical field that will lead to advanced programs or employment opportunities in engineering, health sciences, or teaching.



(e) Cooperative innovative high school programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on the campus of a ~~community college~~ college or university.

(f) Students are eligible to attend these programs as early as ninth grade.

**"§ 115C-238.50A. Definitions.**

The following definitions apply in this Part:

- (1) Constituent institution. – A constituent institution as defined in G.S. 116-2(4).
- (2) Education partner. – An education partner as provided in G.S. 115C-238.52.
- (3) Governing board. – The State Board of Community Colleges, the Board of Governors of The University of North Carolina, or the Board of the North Carolina Independent Colleges and Universities.
- (4) Local board of trustees. – The board of trustees of a community college, constituent institution of The University of North Carolina, or private college located in North Carolina.

**"§ 115C-238.51. Application process.**

(a) A local board of education and ~~a~~ at least one local board of trustees ~~of a community college~~ shall jointly apply to establish a cooperative innovative high school program under this Part.

(b) The application shall contain at least the following information:

- (1) A description of a program that implements the purposes in G.S. 115C-238.50.
- (2) A statement of how the program relates to the Economic Vision Plan adopted for the economic development region in which the program is to be located.
- (3) The facilities to be used by the program and the manner in which administrative services of the program are to be provided.
- (4) A description of student academic and vocational achievement goals and the method of demonstrating that students have attained the skills and knowledge specified for those goals.
- (5) A description of how the program will be operated, including budgeting, curriculum, transportation, and operating procedures.
- (6) The process to be followed by the program to ensure parental involvement.
- (7) The process by which students will be selected for and admitted to the program.
- (8) A description of the funds that will be used and a proposed budget for the program. This description shall identify how the average daily membership (ADM) and full-time equivalent (FTE) students are counted.
- (9) The qualifications required for individuals employed in the program.
- (10) The number of students to be served.

(11) A description of how the program's effectiveness in meeting the purposes in G.S. 115C-238.50 will be measured.

(c) The application shall be submitted to the State Board of Education and the ~~State Board of Community Colleges~~ applicable governing Boards by November 1 of each year. The ~~State Board of Education and the State Board of Community Colleges~~ Boards shall appoint a joint advisory committee to review the applications and to recommend to the ~~State Boards~~ those programs that meet the requirements of this Part and that achieve the purposes set out in G.S. 115C-238.50.

(d) ~~The State Board of Education and the State Board of Community Colleges shall approve two cooperative innovative high school programs in each of the State's economic development regions.~~ The ~~State Boards~~ may approve programs recommended by the joint advisory committee or may approve other programs that were not recommended. The ~~State Boards~~ shall approve all applications by March 15 of each year. No application shall be approved unless the ~~State Boards~~ State Board of Education and the applicable governing Board find that the application meets the requirements set out in this Part and that granting the application would achieve the purposes set out in G.S. 115C-238.50. Priority shall be given to applications that are most likely to further State education policies, to address the economic development needs of the economic development regions in which they are located, and to strengthen the educational programs offered in the local school administrative units in which they are located.

**"§ 115C-238.52. Participation by other education partners.**

(a) Any or all of the following education partners may participate in the development of a cooperative innovative program under this Part that is targeted to high school students who would benefit from accelerated academic instruction:

- (1) ~~A constituent institution of The University of North Carolina.~~
- (2) ~~A private college or university located in North Carolina.~~
- (3) A private business or organization.
- (4) The county board of commissioners in the county in which the program is located.

(b) Any or all of the education partners listed in subsection (a) of this section that participate shall:

- (1) Jointly apply with the local board of education and the local board of trustees ~~of the community college~~ to establish a cooperative innovative program under this Part.
- (2) Be identified in the application.
- (3) Sign the written agreement under G.S. 115C-238.53(b).

**"§ 115C-238.53. Program operation.**

(a) A program approved by the State ~~shall be~~ is accountable to the local board of education.

(b) A program approved under this Part shall operate under the terms of a written agreement signed by the local board of education, local board of ~~trustees of the community college,~~ trustees, State Board of Education, and ~~State Board of Community Colleges,~~ applicable governing Board. The agreement shall incorporate the information provided in the application, as modified during the approval process, and any terms and

conditions imposed on the program by the State Board of Education and the ~~State Board of Community Colleges~~, applicable governing Board. The agreement may be for a term of no longer than five school years.

(c) A program may be operated in a facility owned or leased by the local board of education, the local board of ~~trustees of the community college~~, trustees, or the education partner, if any.

(d) A program approved under this Part shall provide instruction each school year for at least 180 days during nine calendar months, shall comply with laws and policies relating to the education of students with disabilities, and shall comply with Article 27 of this Chapter.

(e) A program approved under this Part may use State, federal, and local funds allocated to the local school administrative unit, to the ~~State Board of Community Colleges~~, applicable governing Board, and to the ~~community college or university~~ to implement the program. If there is an education partner and if it is a public body, the program may use State, federal, and local funds allocated to that body.

(f) Except as provided in this Part and ~~pursuant to~~ under the terms of the agreement, a program is ~~exempt~~ may be exempted by the applicable governing Board from laws and rules applicable to a local board of education, a local school administrative unit, a community college, a constituent institution, or a local board of ~~trustees of a community college~~. trustees.

**"§ 115C-238.54. Funds for programs.**

(a) The Department of Public Instruction shall assign a school code for each program that is approved under this Part. All positions and other State and federal allotments that are generated for this program shall be assigned to that school code. Notwithstanding G.S. 115C-105.25, once funds are assigned to that school code, the local board of education may use these funds for the program and may transfer these funds between funding allotment categories.

(b) The local board of trustees ~~of a community college~~ may allocate State and federal funds for a program that is approved under this Part.

(c) An education partner under G.S. 115C-238.52 that is a public body may allocate State, federal, and local funds for a program that is approved under this Part.

(d) If not an education partner under G.S. 115C-238.52, a county board of commissioners in a county where a program is located may nevertheless appropriate funds to a program approved under this Part.

(e) The local board of education and the local board of trustees ~~of the community college~~ are strongly encouraged to seek funds from sources other than State, federal, and local appropriations. They are strongly encouraged to seek funds the Education Cabinet identifies or obtains under G.S. 116C-4.

**"§ 115C-238.55. Evaluation of programs.**

The State Board of Education and the ~~State Board of Community Colleges~~ governing Boards shall evaluate the success of students in programs approved under this Part. Success shall be measured by high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, postgraduation employment in career or

study-related fields, and employer satisfaction of employees who participated in and graduated from the programs. Beginning October 15, 2005, and annually thereafter, the Boards shall jointly report to the Joint Legislative Education Oversight Committee on the evaluation of these programs. If, by October 15, 2006, the Boards determine any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the State. This plan shall be included in their report to the Joint Legislative Education Oversight Committee that is due by October 15, 2007."

**SECTION 7.33.(b)** It is the intent of the General Assembly that three cooperative innovative high school programs are established that emphasize the educational development of high school students in the areas of science and mathematics in a nonresidential setting. One of these programs shall be located in the eastern region of the State, one shall be located in the central region of the State, and one shall be located in the western region of the State. The State Board of Education shall begin planning for the design and implementation of these programs and shall report their plan to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by March 15, 2006.

The plan shall include, but not be limited to, the following aspects of the proposed programs:

- (1) Programmatic design including location, curriculum, student access, and calendar.
- (2) Projected costs of operation, including instructional, administrative, transportation, capital, and other costs.
- (3) Any plans for coordination with institutes of higher education.
- (4) Proposed implementation schedule.

#### **MINIMIZE TIME DEVOTED TO STANDARDIZED TESTS**

**SECTION 7.37.** G.S. 115C-174.12(a) reads as rewritten:

"(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

- (1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;
- (2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and
- (3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article."

## **EDUCATION CABINET**

**SECTION 7.38.(a)** G.S. 116C-1(b) reads as rewritten:

"(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members."

**SECTION 7.38.(b)** The Education Cabinet shall study:

- (1) The extent to which school nurses, school social workers, and other instructional support personnel collaborate with each other and with local health, mental health, and social services providers to meet the needs of at-risk children and their families and to support the educational achievement of at-risk children; and
- (2) The need for additional training for school nurses, school social workers, and other instructional support personnel on multidisciplinary assessments and on referral and care coordination for at-risk students and their families.

The Education Cabinet shall report the results of its study and its recommendations to the Joint Legislative Education Oversight Committee prior to April 15, 2006.

## **THE CENTER FOR 21<sup>ST</sup> CENTURY SKILLS**

**SECTION 7.39.(a)** The State Board of Education shall transfer funds appropriated for the Center for 21<sup>st</sup> Century Skills to the Office of the Governor. These funds shall be used for the establishment of the Center for 21<sup>st</sup> Century Skills within the North Carolina Business Committee for Education, Inc. The purpose of the Center shall be to design curriculum, teacher training, and student assessment to support students acquiring the knowledge and skills needed for the emerging workforce of the 21<sup>st</sup> century.

**SECTION 7.39.(b)** The North Carolina Business Committee for Education, Inc., and the Center for 21<sup>st</sup> Century Skills shall coordinate their efforts on high school reform with the North Carolina New Schools Project.

**SECTION 7.39.(c)** The North Carolina Business Committee for Education, Inc., and the Center for 21<sup>st</sup> Century Skills shall work with the North Carolina Science, Mathematics and Technology Education Center, the North Carolina School of Science and Mathematics, the North Carolina Board of Science and Technology, and the governing boards of education to research and propose options to create new or expand existing mathematics and science summer enrichment programs across the State and to establish nonresidential high schools focused on mathematics, science, and technology.

### **TEACHER WORKING CONDITIONS SURVEY**

**SECTION 7.40.(a)** Funds in the amount of two hundred fifteen thousand dollars (\$215,000) for the 2005-2006 fiscal year and two hundred ninety thousand dollars (\$290,000) for the 2006-2007 fiscal year are appropriated in section 2.1 of this act to administer the Governor's Teacher Working Conditions Survey Initiative. These funds shall be used by the State Board of Education, in collaboration with the North Carolina Professional Teaching Standards Commission to (i) administer the survey on a biennial basis, (ii) establish an advisory board to oversee implementation of recommendations from the survey, and (iii) support the NC Network in providing customized analysis to incorporate in school improvement plans.

**SECTION 7.40.(b)** The State Board of Education may supplement these funds with gifts or other private funds donated for this purpose.

### **PLAN AND FUNDING FOR A VIRTUAL HIGH SCHOOL**

**SECTION 7.41.(a)** The State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges shall develop E-learning standards and plans for infrastructures that provide virtual learning opportunities accessible to students and other citizens through all North Carolina schools, universities, and community colleges. In developing the plan for the public schools, the State Board of Education shall focus initially on high schools while also researching and developing, where appropriate, E-learning for middle schools, junior high schools, and elementary schools. E-learning programs shall support both teachers and students.

**SECTION 7.41.(b)** As used in this section, "E-learning" is electronic learning that includes a wide set of applications and processes, such as Web-based learning, computer-based learning, virtual classrooms, and digital collaboration. It includes the delivery of content via Internet, intranet/extranet (LAN/WAN), audiotape, videotape, satellite broadcast, interactive television, and CD-ROM.

**SECTION 7.41.(c)** It is the intent of the General Assembly to give public schools the highest priority in funding for and development of E-learning. Funding for E-learning should be a new appropriation and not come exclusively from existing funds.

**SECTION 7.41.(d)** The State Board of Education shall use funds appropriated for a virtual high school to establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year.

The State Board of Education shall include in the pilot program instruction on personal financial literacy. This instruction shall be designed to equip students with the knowledge and skills they need, before they become self-supporting, to make critical decisions regarding their personal finances. The components of instruction shall include, at a minimum, consumer financial education, personal finance, and personal credit.

**SECTION 7.41.(e)** If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year.

## **FEASIBILITY STUDY FOR DEVELOPING REGIONAL EDUCATION NETWORKS**

**SECTION 7.42.** The North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with interested providers of broadband services, representatives from local school administrative units, The University of North Carolina, private colleges, the State Board of Education, the State Chief Information Officer, and the Community College System shall perform a feasibility study on developing regional education networks that provide and sustain broadband service access to individual students and teachers in schools, community colleges, and universities.

The study shall include (i) an evaluation of existing technology and service applications such as the statewide infrastructure, those operated by the private sector, the North Carolina Research and Education Network, and networks such as Winston-Net and (ii) an evaluation of newer technology such as wireless broadband access. It shall recommend ways to maximize the use of these existing resources to support growth in broadband service access to the State, including underserved regions.

The North Carolina Rural Economic Development Center and the e-NC Authority shall report the results of the study to the 2006 Regular Session of the 2005 General Assembly.

## **ASSISTANCE WITH SCHOOL TECHNOLOGY NEEDS**

**SECTION 7.43.(a)** G.S. 115C-102.6A(c) is amended by adding a new subdivision to read:

"(c) Components of the State school technology plan shall include at least the following:

...

(17) A baseline template for:

a. Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and

- b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems."

**SECTION 7.43.(b)** No later than October 31, 2005, the Department of Public Instruction shall hold regional workshops for local school administrative units to provide guidance in developing local school system technology plans that meet the criteria established in the State school technology plan, including the components added under subsection (a) of this section.

**SECTION 7.43.(c)** G.S. 115C-102.7 is amended by adding the following new subsection to read:

"(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education and the State Chief Information Officer on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

**SECTION 7.43.(d)** The State Board of Education shall determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology as specified in the revised local school system technology plans. This shall include personnel costs for both technical and instructional needs so that a three- to five-year budget plan can be developed for the General Assembly.

**SECTION 7.43.(e)** The State Board of Education shall also study and identify the types of resources needed to operate schools designed to meet the needs of twenty-first century learners.

The State Board shall report the results of this study to the 2006 Regular Session of the 2005 General Assembly.

**SECTION 7.43.(f)** In order to provide assistance to local school administrative units with E-rate applications, the Department of Public Instruction shall, within existing funds, ensure that a minimum of one full-time coordinator is assigned this responsibility. The Department shall notify local school administrative units about the person or office assigned the responsibility of providing assistance with E-rate applications.

The Department shall provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by local school administrative units.

As used in this section, "E-rate" is the mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996.

## **SCHOOL EMPLOYEE SALARY STUDY**



**SECTION 7.47.** The Joint Legislative Education Oversight Committee shall research and study the current salary structure for teachers. In the course of the study, the Committee shall:

- (1) Develop a method to determine North Carolina's ability to remain competitive in recruiting and retaining highly qualified teachers.
- (2) Consider new salary schedule options in lieu of a simple modification of the current salary schedule.
- (3) Research and make recommendations on whether or not compressing or expanding a teacher salary schedule would assist in retaining teachers at critical periods when many teachers tend to leave the profession.
- (4) Develop and recommend an adequate compensation structure for masters degree and other advanced training.
- (5) Consider the placement of appropriate extraordinary increases on the teacher salary schedule for achievement of career status, teacher retention, and other purposes.
- (6) Consider how personal leave and other fringe benefits contribute to the compensation packages for employees.

#### **REDIRECT REFUNDABLE SALES TO STATE PUBLIC SCHOOL FUND**

**SECTION 7.51.(a)** G.S. 105-164.14(c)(2b) and (2c) are repealed.

**SECTION 7.51.(b)** Part 8 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.44H. Transfer to State Public School Fund.**

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the State Public School Fund, one-fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year."

**SECTION 7.51.(c)** Subsection (b) of this section becomes effective July 1, 2006. Notwithstanding the provisions of G.S. 105-164.44H, for the 2006-2007 fiscal year, the amount transferred to the State Public School Fund each quarter shall equal one-fourth of the amount refunded under G.S. 105-164.4(c)(2b) and (2c) during the 2005-2006 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The remainder of this section becomes effective July 1, 2005, and applies to sales made on or after that date.

#### **SMALL SPECIALTY HIGH SCHOOLS PILOT PROGRAM**

**SECTION 7.52.(a)** Funds are appropriated in this act for a pilot program to create 11 small specialty high schools within existing schools. The purpose of the program is to improve graduation rates and to achieve higher student performance as measured by standard tests and postgraduate gainful employment or admission into an

institution of higher education. The State Board of Education shall work closely with the Education Cabinet and the New Schools Project in administering the program.

**SECTION 7.52.(b)** The State Board of Education shall conduct an evaluation of this program. The evaluation shall include measures as identified in G.S. 115C-238.55. It shall also include: (i) an accounting of how funds and personnel resources were utilized and their impact on student achievement, retention, and employability; and (ii) recommendations for improvement of the program. The State Board of Education shall report the results of this evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

### **ENSURE DHHS SCHOOLS RECEIVE FEDERAL FUNDS**

**SECTION 7.54.(a)** It is the intent of the General Assembly that the schools operated by the Department of Health and Human Services participate in federal funding to the same degree as other public schools in the State. The Department of Public Instruction shall ensure that the Department of Health and Human Services schools receive a proportionate share of federal funds for public schools.

**SECTION 7.54.(b)** G.S. 115C-66 reads as rewritten:

**"§ 115C-66. Administrative units classified.**

Each county of the State shall be classified as a county school administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city school administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All local school administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way.

For purposes of eligibility for federal grant funds, the Department of Health and Human Services is hereby classified as a public authority, which is the school administrative agency for the schools that it operates, and shall be considered as such by the State school authorities in the administration and distribution of federal grant funds."

**SECTION 7.54.(c)** The Department of Health and Human Services shall report on the use, type, and amount of funds received from federal funding and other Department of Public Instruction funding under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by January 31, 2006.

### **STUDY OF SCHOOL TRANSPORTATION**

**SECTION 7.57.** Of the funds appropriated for Student Transportation for the 2005-2006 fiscal year, the Department of Public Instruction shall use up to one hundred fifty thousand dollars (\$150,000) for a study of the current allotment formula for school transportation. The study shall be conducted by an independent consultant.

In the course of the study, the consultant shall consider whether (i) the current formula sufficiently encourages the efficient and effective use of school transportation funds by urban and rural school systems, (ii) the formula is adequately and equitably meeting the needs of school systems, and (iii) the formula is appropriate in light of the Leandro litigation. The consultant shall also propose options for reducing the severe and growing disparity in funding that exists under the formula among local school administrative units.

The consultant shall report the results of its study to the State Board of Education by December 1, 2005. The State Board of Education shall submit a plan for the implementation of the consultant's report to the Joint Legislative Education Oversight Committee by March 15, 2006.

## **REVIEW OF INTERNAL CONTROLS**

**SECTION 7.58.** G.S. 115C-447 reads as rewritten:

**"§ 115C-447. Annual independent audit.**

(a) Each local school administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of a local school administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any local school administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the local school administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or

information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a Class 1 misdemeanor.

The State Auditor shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited.

(b) When the State Board of Education finds that incidents of fraud, embezzlement, theft, or management failures in a local school administrative unit make it appropriate to review the internal control procedures of the unit, the State Board of Education shall so notify the unit. If the incidents were discovered by the firm performing the audit under subsection (a) of this section, the board of the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. Where the firm preparing the audit under subsection (a) of this section identifies significant problems with internal control procedures the local school administrative unit shall submit the audit together with a plan for any corrective actions relative to its internal control procedures to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit.

If the incidents were not discovered by the firm performing the audit under subsection (a) of this section, the State Board of Education and the Local Government Commission shall employ an audit firm to review the internal control procedures of that local school administrative unit. Upon completion of this review, the audit firm shall report publicly to the State Board of Education, the Local Government Commission, and the board of the local school administrative unit. If the State Board of Education determines that significant changes are needed in the internal control procedures of the local school administrative unit, the local board shall submit a plan of corrective actions to the State Board of Education and the Local Government Commission for approval and shall implement the approved changes prior to the next annual audit. The local school administrative unit shall pay the cost of this audit."

## **TEACH FINANCIAL LITERACY IN PUBLIC SCHOOLS**

**SECTION 7.59.(a)** G.S. 115C-81 is amended by adding a new subsection to read:

"(i) Both the standard course of study and the Basic Education Program shall include the requirement that the public schools provide instruction in personal financial literacy for all students during the high school years. The State Board of Education shall determine the components of personal financial literacy that will be covered in the curriculum. The State Board shall also review the high school standard course of study to determine in which course the new personal financial literacy curriculum can be integrated."

**SECTION 7.59.(b)** When developing the personal financial literacy curriculum, the State Board of Education shall consider the curriculum, materials, and guidelines developed for the pilot programs on financial literacy created by Section 7.35

of S.L. 2003-284. The State Board shall also consider the recommendations from any evaluations of the pilot programs.

**SECTION 7.59.(c)** The State Board of Education shall have up to two years to develop the personal financial literacy curriculum and integrate the curriculum into the standard course of study. The State Board shall report to the Joint Legislative Education Oversight Committee on the proposed curriculum before implementation.

## **REPORTS ON THE EXPENDITURE OF SUPPLEMENTAL FUNDS FOR LOW-WEALTH COUNTIES**

**SECTION 7.60.** Local boards of education shall report to the State Board of Education by August 31 of each year on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement specific improvement strategies of each local school administrative unit and its schools, such as teacher recruitment, closing the achievement gap, improving student accountability, addressing the needs of at-risk students, and establishing and maintaining safe schools. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

## **PROVIDE FOR NEW ACCOUNTABILITY FOR THE USE OF FUNDS IN THE AT-RISK AND IMPROVING STUDENT ACCOUNTABILITY ALLOTMENTS**

**SECTION 7.61.(a)** Funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment shall be used consistent with the policies and procedures adopted by the State Board of Education. Priority for use of the funds shall be to (i) provide instructional positions or instructional support positions and/or professional development; (ii) provide intensive in-school and/or after-school remediation; and (iii) purchase diagnostic software and progress monitoring tools.

**SECTION 7.61.(b)** To remain eligible for funds appropriated for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education shall report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

## **PART VIII. COMMUNITY COLLEGES**

### **USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT**

**SECTION 8.1.(a)** Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2004-2005 fiscal year but shall remain available until expended.

**SECTION 8.1.(b)** The Community Colleges System Office shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the College Information System Project.

**SECTION 8.1.(c)** Subsection (a) of this section becomes effective June 30, 2005.

### **CARRYFORWARD FOR EQUIPMENT**

**SECTION 8.2.(a)** Subject to the approval of the Office of State Budget and Management and cash availability, the North Carolina Community Colleges System Office may carry-forward an amount not to exceed fifteen million dollars (\$15,000,000) of the operating funds that were not reverted in fiscal year 2004-2005 to be reallocated to the State Board of Community Colleges' Equipment Reserve Fund. These funds shall be distributed to colleges consistent with G.S. 115D-31.

**SECTION 8.2.(b)** This section becomes effective June 30, 2005.

### **SALARIES OF COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF**

**SECTION 8.3.(a)** The minimum salaries for community college faculty shall be based on the following education levels:

- (1) Vocational Diploma/Certificate or Less. – This education level includes faculty members who are high school graduates, have vocational diplomas, or have completed one year of college.
- (2) Associate Degree or Equivalent. – This education level includes faculty members who have an associate degree or have completed two or more years of college but have no degree.
- (3) Bachelors Degree.
- (4) Masters Degree or Education Specialist.
- (5) Doctoral Degree.

**SECTION 8.3.(b)** For the 2005-2006 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

Education Level	Minimum Salary <u>2005-2006</u>
Vocational Diploma/Certificate or Less	\$29,932
Associate Degree or Equivalent	\$30,373
Bachelors Degree	\$32,283
Masters Degree or Education Specialist	\$33,978
Doctoral Degree	\$36,421

No full-time faculty member shall earn less than the minimum salary for his or her education level.

The pro rata hourly rate of the minimum salary for each education level shall be used to determine the minimum salary for part-time faculty members.

**SECTION 8.3.(c)**

- (1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average, therefore:
  - a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.
  - b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.
  - c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.
  - d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.
  - e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

- (2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.
- (3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for New and Expanding Industry Training to increase faculty salaries.

**SECTION 8.3.(d)** As used in this section:

- (1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.
- (2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

**SECTION 8.3.(e)** The State Board of Community Colleges shall adopt rules to implement the provisions of this section.

**SECTION 8.3.(f)** The State Board of Community Colleges shall report to the appropriations subcommittees on education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009, on the implementation of this section.

**SECTION 8.3.(g)** Funds appropriated in this act for salary increases shall be used to increase faculty and professional staff salaries by an average of two percent (2%). These increases are in addition to other salary increases provided for in this act and shall be calculated on the average salaries prior to the issuance of the compensation increase. Colleges may provide additional increases from funds available.

The State Board of Community Colleges shall adopt rules to ensure that these funds are used only to move faculty and professional staff to the respective national averages. These funds shall not be transferred by the State Board or used for any other budget purpose by the community colleges.

## **WORKFORCE DEVELOPMENT PROGRAMS**

**SECTION 8.4.(a)** Article 1 of Chapter 115D of the General Statutes is amended by adding a new G.S. 115D-5.1 to be entitled "Workforce Development Programs"; G.S. 115D-5(d) is recodified as G.S. 115D-5.1(a); G.S. 115D-5(k) is recodified as G.S. 115D-5.1(b); and G.S. 115D-5(i) is recodified as G.S. 115D-5.1(c).

**SECTION 8.4.(b)** G.S. 115D-5.1, as enacted by subsection (a) of this section, reads as rewritten:

### **"§ 115D-5.1. Workforce Development Programs.**

(a) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.



(b) The North Carolina Community College System's New and Expanding Industry Training (NEIT) Program Guidelines, which were adopted by the State Board of Community Colleges on April 18, 1997, apply to all funds appropriated for the Program after June 30, 1997. A project approved as an exception under these Guidelines, or these Guidelines as modified by the State Board of Community Colleges, shall be approved for one year only.

(c) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on September 1 of each year on expenditures for the New and Expanding Industry Training Program each fiscal year. The report shall include, for each company or individual that receives funds for the New and Expanding Industry Training Program:

- (1) The total amount of funds received by the company or individual;
- (2) The amount of funds per trainee received by the company or individual;
- (3) The amount of funds received per trainee by the community college training the trainee;
- (4) The number of trainees trained by company and by community college; and
- (5) The number of years the companies or individuals have been funded.

(d) Funds available to the New and Expanding Industry Training Program shall not revert at the end of a fiscal year but shall remain available until expended.

(e) There is created within the North Carolina Community College System the Customized Industry Training (CIT) Program. The CIT Program shall offer programs and training services as new options for assisting existing business and industry to remain productive, profitable, and within the State. Before a business or industry qualifies to receive assistance under the CIT Program, the President of the North Carolina Community College System shall determine that:

- (1) The business is making an appreciable capital investment;
- (2) The business is deploying new technology; and
- (3) The skills of the workers will be enhanced by the assistance.

The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

- (1) The total amount of funds received by a company under the CIT Program;
- (2) The amount of funds per trainee received by that company;
- (3) The amount of funds received per trainee by the community college delivering the training;
- (4) The number of trainees trained by the company and community college; and
- (5) The number of years that company has been funded.

The State Board shall adopt rules and policies to implement this section."

**SECTION 8.4.(c)** Notwithstanding any other provision of law, the State Board of Community Colleges may use funds appropriated to it for the New and

Expanding Industry Training Program to operate programs under the Customized Industry Training Program.

**SECTION 8.4.(d)** G.S. 115D-5.1(d), as enacted by this section, becomes effective June 30, 2005.

### **REPORT ON THE ADEQUACY OF MULTICAMPUS FUNDS**

**SECTION 8.5.** The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year.

Notwithstanding any other provision of law, funds appropriated to the Community Colleges System Office for multicampus colleges or off-campus centers shall be used only for the administration of the multicampus college or off-campus center for which the funds were allotted. These funds shall not be transferred to any other campus or center, or used for any other purpose.

### **EDUCATION PROGRAM AUDITING FUNCTION**

**SECTION 8.6.** G.S. 115D-5(m) reads as rewritten:

"(m) The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. The State Board of Community Colleges shall maintain an education program auditing function that conducts an annual audit of each community college operating under the provisions of this Chapter. The purpose of the annual audit shall be to ensure that college programs and related fiscal operations comply with State law, State regulations, State Board policies, and System Office guidance. The State Board of Community Colleges shall require auditors of community college programs to use a statistically valid sample size in performing program audits of community colleges. All education program audit findings shall be forwarded to the college president, local college board of trustees, the State Board of Community Colleges, and the State Auditor. The State Board shall assess a twenty-five percent (25%) fiscal penalty in addition to the audit exception on all audits of both dollars and student membership hours excepted when the audit exceptions result from nonprocessing errors."

### **FERRY BOAT OPERATOR TRAINING FEASIBILITY STUDY**

**SECTION 8.7.(a)** The State Board of Community Colleges, in consultation with the Ferry Division of the Department of Transportation, shall study the need for training for ferry boat operators. In conducting the study, the State Board shall consider the following:

- (1) Types of training needed and whether it is feasible for the community colleges to provide this training.
- (2) Estimated number of students.
- (3) Estimated employment opportunities for the students.
- (4) Start-up costs for the program and resources for those costs.
- (5) Location of the training.

**SECTION 8.7.(b)** The State Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee on its findings and recommendations no later than December 1, 2005.

**EXTEND THE SUNSET ON TRAINING AND REEMPLOYMENT CONTRIBUTIONS MADE BY EMPLOYERS**

**SECTION 8.8.(a)** Section 8 of S.L. 1999-321, as amended by Section 30.5(f) of S.L. 2001-424, reads as rewritten:

"Section 8. Section 1 of this act is effective with respect to calendar quarters beginning on or after April 1, 1999. Section 7 of this act becomes effective July 1, 1999. The remainder of this act is effective with respect to calendar quarters beginning on or after January 1, 2000. ~~G.S. 96-6.1, as enacted by Section 2 of this act, is repealed effective with respect to calendar quarters beginning on or after January 1, 2006.~~"

**SECTION 8.8.(b)** G.S. 96-6.1 is amended by adding a new subsection to read:

"(c) Sunset. – This section is repealed effective with respect to calendar quarters beginning on or after January 1, 2011."

**CARRYFORWARD FOR COLLEGES IN ECONOMICALLY DISADVANTAGED COUNTIES**

**SECTION 8.10.(a)** Notwithstanding G.S. 143-18 or any other provision of law, a community college may retain and carry forward its General Fund current operations credit balance remaining at the end of the fiscal year if the county in which the main campus of the community college is located:

- (1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 105-129.3;
- (2) Had an unemployment rate greater than or equal to seven percent (7%) in calendar year 2004; and
- (3) Is designated as a Low-Wealth County under Section 7.6 of this act, whose wealth as calculated by the Low-Wealth Formula is eighty percent (80%) or less of the State Average.

**SECTION 8.10.(b)** Community colleges that qualify for a carryforward under subsection (a) of this section that do not receive maintenance of plant funds pursuant to G.S. 115D-31.2 may use up to fifty thousand dollars (\$50,000) from the carryforward to supplement local funding for maintenance of plant. Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended.

**SECTION 8.10.(c)** Colleges who serve counties that meet the criteria outlined in subsection (a) of this section, but whose main campuses are not located in such counties, may carry forward the percentage of the funds remaining at the end of the fiscal year equal to the percentage of total full-time equivalent students served in those counties that meet the criteria, as determined by the North Carolina Community Colleges System Office.

**SECTION 8.10.(d)** Allowable carryforwards under this section shall be calculated prior to the calculation of Performance Funding as described in G.S. 115D-31.3.

**SECTION 8.10.(e)** This section becomes effective June 30, 2005, but expires June 30, 2006.

### **DEFENSE TECHNOLOGY INNOVATION CENTER**

**SECTION 8.11.** Funds appropriated in this act for North Carolina Electronics and Information Technologies Association's Defense Technology Innovation Center shall be used for the following:

- (1) Site selection and acquisition, including the purchase or lease of real property to house the Center; the construction of buildings or other site structures; the improvement or refurbishment of existing structures to provide appropriate laboratory and administrative space; and the improvement of existing infrastructure at the facility, including improvements to utility, telecommunications, and Internet infrastructure.
- (2) Equipment acquisition, including acquisition of laboratory equipment and supplies and office furniture, equipment, and supplies.
- (3) Employment of staff to support the mission of the Center and to oversee day-to-day operations of the Center.
- (4) Implementation of a comprehensive business and marketing plan for the Center.
- (5) Development of a tenant screening process and the recruitment of appropriate tenants for the Center.
- (6) Administration and operation of the Center and the development of a sustainable business plan for the Center.

### **COMMUNITY COLLEGE CAPITAL FUNDS**

**SECTION 8.12.** Notwithstanding G.S. 115D-31 or any other provision of law, funds appropriated in this act for community college capital projects do not have to be matched by local funds.

### **IMPLEMENT PROPRIETARY SCHOOLS LICENSING FEE INCREASE**

**SECTION 8.14.** The State Board of Community Colleges may implement an increase in fees for licensing of proprietary schools in accordance with the following fee schedule adopted by the State Board of Community Colleges on November 18, 2004:

Initial License Fee	\$2,500
License Renewal Fee	\$1,250 plus \$50.00 per program
Program Addition Fee	\$200.00
Single Course Addition Fee	\$200.00
Relocation/Site Visit Fee	\$400.00
Remote Site Initial Fee	\$1,000
Remote Site Renewal Fee	\$750.00
Site Assessment	\$200.00

**EXEMPT COMMUNITY COLLEGE MASSAGE AND BODYWORK THERAPY PROGRAMS FROM LICENSURE BY THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY**

**SECTION 8.15.(a)** G.S. 90-631 reads as rewritten:

**"§ 90-631. Massage and bodywork therapy schools.**

(a) The Board shall establish rules for the approval of massage and bodywork therapy schools. These rules shall include:

- (1) Basic curriculum standards that ensure graduates have the education and skills necessary to carry out the safe and effective practice of massage and bodywork therapy.
- (2) Standards for faculty and learning resources.
- (3) Requirements for reporting changes in instructional staff and curriculum.
- (4) A description of the process used by the Board to approve a school.

Any school that offers a training program in massage and bodywork therapy may make application for approval to the Board. The Board shall grant approval to schools, whether in this State or another state, that meet the criteria established by the Board. The Board shall maintain a list of approved ~~schools~~-schools and a list of community college programs operating pursuant to subsection (b) of this section.

(b) A massage and bodywork therapy program operated by a North Carolina community college that is accredited by the Southern Association of Colleges and Schools is exempt from the approval process, licensure process, or both, established by the Board. The college shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.

(c) A massage and bodywork therapy program operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency that is recognized by the United States Department of Education and is licensed by the North Carolina Community College System or The University of North Carolina Board of Governors is exempt from the approval process, licensure process, or both, established by the Board. The college or university shall certify annually to the Board that the program meets or exceeds the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who

complete the program shall qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board."

**SECTION 8.15.(a)** This section becomes effective July 1, 2006.

## **PART IX. UNIVERSITIES**

### **UNC BUDGET REDUCTION REPORT/ALLOCATIONS**

**SECTION 9.1.** The Chancellor of each constituent institution shall report to the Board of Governors of The University of North Carolina on the reductions made to the General Fund budget codes in order to meet the reduction amounts for that institution. The President of The University of North Carolina shall report to the Board of Governors of The University of North Carolina on the reductions made to the General Fund budget codes controlled by the Board in order to meet the reduction amounts for those entities. The Board of Governors shall make a summary report to the Office of State Budget and Management and the Fiscal Research Division by December 31, 2005, on all reductions made by these entities and constituent institutions in order to reduce the budgets by the targeted amounts. All reports under this section shall include the positions eliminated and the actions taken on nonpersonnel costs to achieve the reductions.

Except for funds specifically allocated by this act, the Office of State Budget and Management shall certify all University of North Carolina expansion budget items to UNC-GA Institutional Programs for allocation by the Board of Governors as provided by G.S. 116-11(9)a. and G.S. 116-11(9)b. For funds specifically allocated by this act, the Office of State Budget and Management shall certify those University of North Carolina expansion budget items to UNC-GA Institutional Programs for allocation by the Board of Governors as provided by this act.

### **ENROLLMENT GROWTH FUND/ENCOURAGE PARTNERSHIPS FOR NEW 2 + 2 PROGRAMS**

**SECTION 9.2.(a)** The University of North Carolina Board of Governors' Task Force on Meeting Teacher Supply and Demand called for the President to develop a plan for enrollment growth in the University System's teacher education programs to respond to the State's shortage of teachers. In a presentation to the Joint Legislative Education Oversight Committee and to the Board of Governors, a commitment was made to increase the number of teacher education graduates in 2005-2006 and in 2006-2007. The Office of the President of The University of North Carolina shall obtain plans from each campus as to how they will maintain their current enrollment in the teacher education programs and achieve their growth targets to ensure such increases in those programs occur. Plans may include using enrollment growth funds for targeted admissions, enhanced student support, and advising, recruiting, increases in faculty in necessary instructional areas that lead to certification, and other methods the Office of the President believes will achieve those results. The Office of the President shall report back to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2005, on each

campus's plan. No later than March 31, 2006, the Office of the President shall submit a report on progress towards meeting this priority for the 2006-2007 academic year, based on each campus's current students in the education programs, and the students who have been accepted for the 2006-2007 fiscal year who are enrolling in the education programs. The report shall also explain the distribution of enrollment growth funds by specific initiative.

**SECTION 9.2.(b)** The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall strongly encourage the constituent institutions and the community colleges that do not currently have 2 + 2 programs that emphasize teacher education to design and enter into formal partnerships to offer those 2 + 2 programs. The Board of Governors and the Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee by February 1, 2006, regarding the status of existing 2 + 2 programs and any new partnerships established.

### **UNC-NCCCS JOINT INITIATIVE FOR TEACHER EDUCATION AND RECRUITMENT**

**SECTION 9.3.(a)** Funds appropriated in this act to The University of North Carolina for the UNC-NCCCS Joint Initiative for Teacher Education and Recruitment shall be used to establish eight positions. These individuals shall have an office in and work with staff in the Regional Alternative Licensure Centers of the Department of Public Instruction. Their responsibilities are to assist in increasing the number of certified teachers in the public schools of North Carolina. To accomplish this, their specific tasks are as follows:

- (1) Resolve curriculum issues between The University of North Carolina campuses and the community colleges within each region to ensure seamless articulation;
- (2) Serve as licensure advisors to prospective teachers and assist with individual reviews for lateral entry candidates;
- (3) Offer admissions advice to community college students seeking to transfer to a four-year institution; and
- (4) Recruit prospective teachers on community college campuses.

Funds have been included in the appropriation to ensure these staff members can travel routinely among all the University System campuses and community college sites within a region.

**SECTION 9.3.(b)** The results of this initiative shall be reported annually, and shall include at a minimum, the following performance outcomes by region in which the advisors are working:

- (1) Number of community college students articulated and working toward teacher licensure, their "base" community college, and The University of North Carolina institution to which they have moved;
- (2) Number of lateral entry teachers worked with by these advisors who are actively pursuing certification, and the number licensed;

- (3) Head count of the number of students in the process of receiving courses towards certification, their home county, where/at what institution(s) they are taking the course(s), and whether they are taking the course by regular attendance or via distance education (or the respective percentages if both methods are being employed);
- (4) Total full-time equivalencies (FTE's) and student credit hours that the head count in subdivision (3) of this subsection represents;
- (5) Articulation issues and curriculum changes effectively made as a result of these advisors; and
- (6) Articulation issues that are under discussion but have not been satisfactorily resolved.

**SECTION 9.3.(c)** These results shall be reported by September 1, 2006, and annually thereafter to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Commission, and the Office of State Budget and Management.

#### **ENROLLMENT GROWTH FUNDING MODEL**

**SECTION 9.4.** The Office of State Budget and Management, jointly with The University of North Carolina and the Fiscal Research Division of the General Assembly, shall conduct a comprehensive review of the enrollment funding model to review the assumptions contained within each element of the formula, to obtain current benchmark information related to specific elements within the formula, and to examine the impact of alternative elements and assumptions. An alternative to the current model shall be the result of this analysis. This alternative shall be used to prepare a request for enrollment growth funding for the budget to be submitted for the 2007 Session of the General Assembly and shall be shown in comparison to the use of the current formula.

#### **UNC-NCCCS 2+2 E-LEARNING INITIATIVE**

**SECTION 9.5.** Funds appropriated in this act to The University of North Carolina and the North Carolina Community College System for the UNC-NCCCS 2+2 E-Learning Initiative shall be used to fund further development of online courses for 2+2 programs. Based on a mutually agreed upon decision by the State Board of Education Chairman, the President of the North Carolina Community College System, and the President of The University of North Carolina as to the areas of greatest need, funds are available to support joint technology development, systems to track student progress and articulation between a North Carolina community college and a University of North Carolina campus, and to develop technology to support online courses and 2+2 programs.

#### **USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS**

**SECTION 9.6.(a)** There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of sixty-seven million two hundred forty-eight thousand sixteen dollars (\$67,248,016) for fiscal year



2005-2006 and the sum of sixty-seven million six hundred thirty-eight thousand sixteen dollars (\$67,638,016) for fiscal year 2006-2007; and to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars (\$13,981,202) for fiscal year 2005-2006 and the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars (\$13,981,202) for fiscal year 2006-2007. These funds shall be allocated by the North Carolina State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7.

The SEAA shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the Scholarship Programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. The SEAA may make recommendations for redistribution of funds to The University of North Carolina and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

**SECTION 9.6.(b)** There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of seven hundred eighty thousand dollars (\$780,000) for the 2005-2006 fiscal year and the sum of one million one hundred seventy thousand dollars (\$1,170,000) for the 2006-2007 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six thousand five hundred dollars (\$6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection.

The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans, the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

**SECTION 9.6.(c)** If the interest income generated from the Escheat Fund is insufficient to pay the appropriations made in subsections (a) and (b) of this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum of four hundred million dollars (\$400,000,000).

**SECTION 9.6.(d)** All obligations to students for uses of the funds set out in sections that were made before the date this act becomes law shall be fulfilled as to students who remain eligible under the provisions of the respective programs.

## **STUDY OF DISTANCE EDUCATION**

**SECTION 9.7.** The Office of State Budget and Management shall conduct a study to identify and analyze the distance education programs at the institutions in the University System. The study shall identify any duplication in course and program

offerings, leader courses and programs at campuses in a particular area of study, the cost of developing online courses, and determine which campuses are best suited to offer a particular course or program of study. The findings of the study shall be reported to the Joint Legislative Education Oversight Committee no later than April 30, 2006.

## **INFORMATION TECHNOLOGY PROCUREMENT**

**SECTION 9.8.** For purposes of purchasing hardware, software licenses, and multiyear maintenance agreements, The University of North Carolina and its constituent institutions may participate in the aggregation of purchasing administered by the Office of Information Technology Services, as defined in G.S. 147-33.72F. The Office of State Budget and Management shall conduct a cost comparison study of hardware, software license, and multiyear maintenance agreement purchases made by The University of North Carolina and its constituent institutions and by the Office of Information Technology Services, to determine if further aggregation is cost-justified. The Study shall also include an analysis of aggregated purchases by the University System and the effect of educational discounts available to the University System. The report of comparative unit costs shall be completed by December 31, 2005.

## **BOARD OF GOVERNORS' DENTAL SCHOLARSHIPS**

**SECTION 9.9.(a)** The current Board of Governors' Dental Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Dental Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Dental Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers for first-year students, required dental equipment, and an annual payment of five thousand dollars (\$5,000) per year to students who have been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill. The Board may adopt standards, including minimum grade point average and DAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice dentistry in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of

scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

**SECTION 9.9.(b)** Any dental scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

## **BOARD OF GOVERNORS' MEDICAL SCHOLARSHIPS**

**SECTION 9.10.(a)** The current Board of Governors' Medical Scholarship Program, under the purview of the Board of Governors of The University of North Carolina, shall make any awards to students admitted after July 1, 2005, as scholarship loan awards. The Board of Governors' Medical Scholarship Program is administered by the Board of Governors of The University of North Carolina. The Board of Governors' Medical Scholarship Program shall be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of five thousand dollars (\$5,000) per year to students who have been accepted for admission to either Duke University School of Medicine, Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill School of Medicine, or the Wake Forest University School of Medicine. The Board may adopt standards, including minimum grade point average and MCAT scores, for awarding these scholarship loans to ensure that only the most qualified students receive them. The Board shall make an effort to identify and encourage minority and economically disadvantaged youth to enter the program. All scholarship loans shall be evidenced by notes made payable to the Board that shall bear interest at the rate of ten percent (10%) per year beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board. The Board shall forgive the loan if, within seven years after graduation, the recipient practices medicine in North Carolina for four years. The Board shall also forgive the loan if it finds that it is impossible for the recipient to practice medicine in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient. All unused funds appropriated to or otherwise received by the Board for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall revert to the General Fund at the end of each fiscal year.

**SECTION 9.10.(b)** Any medical scholarship awarded prior to July 1, 2005, shall remain a scholarship and shall not be converted to a scholarship loan unless the recipient agrees to the conversion.

## **TEACHER SCHOLARSHIPS FUNDS**

**SECTION 9.11.(a)** Article 23 of Chapter 116 of the General Statutes is amended by adding the following new section:

**"§ 116-209.38. Future Teachers of North Carolina Scholarship Loan Fund.**

**(a) There is established the Future Teachers of North Carolina Scholarship Loan Fund. The purpose of the Fund is to provide a two-year scholarship loan of six thousand**

five hundred dollars (\$6,500) per year for any North Carolina student pursuing a college degree to teach in the public schools of the State. The scholarship loan shall be paid only for the student's junior and senior years. The scholarship loan is available if the student is enrolled in a State institution of higher education or a private institution of higher education located in this State that has an accredited teacher preparation program for students planning to become certified teachers in North Carolina. The State Education Assistance Authority shall administer the Fund and shall award 100 scholarship loans annually.

(b) The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, shall develop the criteria for awarding the scholarship loans under this section and shall adopt very stringent standards for awarding these scholarship loans to ensure that only the best students receive them. Additional criteria for awarding a scholarship loan under this section shall include all of the following:

- (1) The student is one who either: (i) maintained a "B" or better average in college and is enrolled as a junior or senior in a teacher preparation program at any of the institutions described by subsection (a) of this section; or (ii) completed a college transfer curriculum at a community college in the State's Community Colleges System, maintained a "B" or better average in the community college courses, and is accepted and enrolled in a teacher preparation program at one of the institutions described by subsection (a) of this section.
- (2) The student agrees to become certified in math, science, special education, or English as a Second Language and teach full-time in that subject area in a North Carolina public school for three years within five years after graduation.
- (3) Any additional criteria that the Board of Governors of The University of North Carolina, in consultation with the State Board of Education and the State Board of Community Colleges, considers necessary to administer the Fund effectively.

(c) If a student who is awarded a scholarship loan under this section fails to comply with the provisions of this section or the terms of the agreement awarding the scholarship loan, then the student shall repay the full amount of the scholarship loan provided to the student and the appropriate amount of interest as determined by the State Education Assistance Authority.

(d) The Board of Governors of The University of North Carolina, the State Board of Education, and the State Board of Community Colleges shall: (i) prepare a clear written explanation of the Future Teachers of North Carolina Scholarship Fund and the information regarding the availability and criteria for awarding the scholarship loans, and (ii) shall provide that information to the appropriate counselors in each local school system and the appropriate institutions of higher education and shall charge those counselors to inform students about the scholarship loans and to encourage them to apply for the scholarship loans.

(e) The Board of Governors of The University of North Carolina shall adopt rules to implement this section.

(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

**SECTION 9.11.(b)** Of the funds appropriated in this act to the State Education Assistance Authority the sum of six hundred fifty thousand dollars (\$650,000) for the 2005-2006 fiscal year and the sum of one million three hundred thousand dollars (\$1,300,000) for the 2006-2007 fiscal year shall be used to implement this act.

### **UNC-ASHEVILLE RETAIN SALE PROCEEDS**

**SECTION 9.12.** Notwithstanding any other provision of law, the University of North Carolina at Asheville may retain the proceeds from the sale of its existing chancellor's residence and appurtenant land. The University of North Carolina at Asheville may use the proceeds from the sale of its existing chancellor's residence and the appurtenant land to construct or otherwise acquire a new chancellor's residence. Proceeds from the sale not used for that purpose within two fiscal years of the sale shall revert to the General Fund.

### **UNC BOND PROJECT MODIFICATIONS**

**SECTION 9.13.(a)** Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Elizabeth City State University by changing the scope of "Mitchell-Lewis Residence Hall-Comprehensive Renovation" to be a replacement project instead of a renovation. Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Elizabeth City State University by replacing "Mitchell Lewis Residence Hall-Comprehensive Renovation" with "Mitchell Lewis Residence Hall-Replacement."

**SECTION 9.13.(b)** Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at North Carolina Central University by the cancellation of "Latham Residence Hall-Comprehensive Renovation". The unused monies from "Latham Residence Hall-Comprehensive Renovation" should be transferred to "Eagleson Residence Hall-Comprehensive Renovation". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina Central University by reducing the money allocated to "Latham Residence Hall-Comprehensive Renovation" by reducing that amount by two million three hundred seventy-three thousand four hundred fifty-seven dollars (\$2,373,457) to a total of one million thirty-eight thousand one hundred forty-three dollars (\$1,038,143) and by increasing the allocation to "Eagleson Residence Hall-Comprehensive Renovation" by two million three hundred seventy-three thousand four hundred fifty-seven dollars (\$2,373,457) to create a total allocation of nine million two hundred forty-two thousand nine hundred fifty-seven dollars (\$9,242,957).

**SECTION 9.13.(c)** Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at Wilmington by the cancellation of "King Hall Classroom Building-Comprehensive Renovation" and by transferring the unused funds to the following projects listed under the portion entitled University of North Carolina at Wilmington: "Academic & Classroom Facilities," "General Classroom Bldg.", "Hinton James Hall Classroom Bldg.-Comprehensive Renovation," "Friday Hall Laboratory Bldg.-Comprehensive Renovation," "Kenan Auditorium-Comprehensive Renovation." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Wilmington by:

- (1) Reducing the allocation to "King Hall Classroom Building-Comprehensive Renovation" by three million one hundred sixty-eight thousand six hundred eighty-nine dollars (\$3,168,689) to create a total allocation of three hundred fifty-eight thousand seven hundred eleven dollars (\$358,711).
- (2) Increasing the allocation to "General Classroom Building" by six hundred seventy-nine thousand seven hundred seventy-eight dollars (\$679,778) to create a total allocation of thirteen million three hundred twenty-six thousand seven hundred seventy-eight dollars (\$13,326,778).
- (3) Increasing the allocation to "Academic & Classroom Facilities" by nine hundred ninety-one thousand one hundred twenty-three dollars (\$991,123) to create a total allocation of thirty-four million twenty-three thousand two hundred twenty-three dollars (\$34,023,223).
- (4) Increasing the allocation to "Hinton James Hall Classroom Building-Comprehensive Renovation" by one hundred seventy-six thousand six hundred nine dollars (\$176,609) to create a total allocation of two million eight hundred six thousand five hundred sixty-one dollars (\$2,806,561).
- (5) Increasing the allocation to "Kenan Auditorium-Comprehensive Renovation" by one hundred fifty-one thousand seven hundred forty-nine dollars (\$151,749) to create a total allocation of two million seventy-three thousand seven hundred twenty-four dollars (\$2,073,724).
- (6) Increasing the allocation to "Friday Hall Laboratory Building-Comprehensive Renovation" by one million one hundred sixty-nine thousand four hundred thirty dollars (\$1,169,430) to create a total allocation of eight million eight hundred sixty-two thousand eight hundred thirty dollars (\$8,862,830).

**SECTION 9.13.(d)** Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at

Pembroke by the cancellation of "West Residence Hall-Comprehensive Renovation" and by transferring the unused funds to a new project, "North and Belk Residence Halls-Fire Safety Improvements and Renovations" and by the cancellation of "Campuswide Infrastructure Improvements" and by transferring those unused funds to a new project, "Biotechnology Teaching Labs and Classroom Building". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under University of North Carolina at Pembroke by:

- (1) Reducing the allocation to "West Residence Hall-Comprehensive Renovation" by eight hundred seventy-nine thousand three hundred dollars (\$879,300) to a total allocation of ninety-eight thousand dollars (\$98,000).
- (2) Reducing the allocation to "Campuswide Infrastructure Improvements" by one million seven hundred thirty thousand three hundred eighty-two dollars (\$1,730,382) to a total allocation of two hundred sixty-six thousand two hundred eighteen dollars (\$266,218).
- (3) Adding a new project entitled "North and Belk Residence Halls-Fire Safety Improvements and Renovations \$879,300".
- (4) Adding a new project entitled "Biotechnology Teaching Labs and Classroom Building \$1,730,382".

**SECTION 9.13.(e)** Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Western Carolina University by the cancellation of "Killian Education & Allied Professional Bldg.-Partial Renovation" and "Conversion of Old Student Health Center to Residential & Academic Space" and by transferring the unused funds to "Stillwell Lab Bldg.-Comprehensive Renovation". Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Western Carolina University by:

- (1) Reducing the allocation to "Killian Education & Allied Professional Bldg.-Partial Renovation" by one million two hundred ninety-seven thousand nine hundred twenty-four dollars (\$1,297,924) to a total allocation of two hundred forty-eight thousand three hundred seventy-six dollars (\$248,376).
- (2) Reducing the allocation to "Conversion of Old Student Health Center to Residential & Academic Space" by one million four hundred ninety-six thousand nine hundred forty-five dollars (\$1,496,945) to a total allocation of three hundred ninety thousand one hundred fifty-five dollars (\$390,155).
- (3) Increasing the allocation to "Stillwell Lab Bldg-Comprehensive Renovation" by two million seven hundred ninety-four thousand eight hundred sixty-nine dollars (\$2,794,869) to a total allocation of seventeen million eight hundred fifty-two thousand three hundred sixty-nine dollars (\$17,852,369).

**SECTION 9.13.(f)** Nothing in this section is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

#### **AMEND NC SCHOOL OF SCIENCE AND MATH TUITION GRANT**

**SECTION 9.14.(a)** G.S. 116-238.1(f) reads as rewritten:

"(f) Notwithstanding any other provision of this section, no tuition grant awarded to a student under this section shall exceed the cost of ~~tuition~~ of attendance at the constituent institution at which the student is enrolled. If a student, who is eligible for a tuition grant under this subsection, also receives a scholarship or other grant covering the cost of ~~tuition~~ attendance at the constituent institution for which the tuition grant is awarded, then the amount of the tuition grant shall be reduced by an appropriate amount determined by the State Education Assistance Authority. The State Education Assistance Authority shall reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of ~~tuition~~ attendance received by the student, including the tuition grant under this section, shall not exceed the cost of ~~tuition~~ attendance for the constituent institution at which the student is enrolled. The cost of attendance, as used in this subsection, shall be determined by the State Education Assistance Authority for each constituent institution."

**SECTION 9.14.(b)** This section applies to any eligible student who is enrolled full-time in The University of North Carolina after July 1, 2005.

#### **UNC-CHAPEL HILL CONTINUE TO OPERATE HORACE WILLIAMS AIRPORT**

**SECTION 9.15.** The Legislative Research Commission shall study the continued viability of the Area Health Education Centers (AHEC) program if the Horace Williams Airport is not available and report its findings to the General Assembly no later than the reconvening of the 2005 Regular Session of the General Assembly in 2006. In conducting the study, the Legislative Research Commission should invite physicians and pilots frequently participating in the AHEC program to appear before the Commission.

The University of North Carolina at Chapel Hill shall operate the Horace Williams Airport and continue air transportation support for the AHEC program and the public from that location until 30 days after sine die adjournment of the 2005 Regular Session of the General Assembly.

#### **NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY FUNDS**

**SECTION 9.16.** Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2005-2006 fiscal year the sum of one million eighty-eight thousand nine hundred forty-one dollars (\$1,088,941) shall be allocated to North Carolina Agricultural and Technical State University for agricultural and research extension programs. It is the intent of the General Assembly to fully fund these programs for the 2006-2007 fiscal year.



**TRANSFER PROSPECTIVE TEACHER SCHOLARSHIP LOAN AND  
TEACHER ASSISTANT SCHOLARSHIP LOAN TO THE NC STATE  
EDUCATION ASSISTANCE AUTHORITY**

**SECTION 9.17.(a)** The Scholarship Loan Fund for Prospective Teachers is transferred from the Department of Public Instruction to the State Education Assistance Authority. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

**SECTION 9.17.(b)** G.S. 115C-468 is recodified as G.S. 116-209.33. G.S. 115C-469, 115C-470, and 115C-472.1 are repealed. G.S. 115C-471 is recodified as G.S. 116-209.34.

**SECTION 9.17.(c)** G.S. 115C-468 recodified by subsection (b) of this section as G.S. 116-209.33 reads as rewritten:

**"§ 116-209.33. ~~Establishment of fund.~~Scholarship Loan Fund for Prospective Teachers.**

(a) There is established a revolving fund known as the "Scholarship Loan Fund for Prospective Teachers". The purpose of the Fund is to provide scholarship loans to qualified individuals who are pursuing college degrees to become teachers. The State Education Assistance Authority shall administer the Fund.

(b) ~~Criteria~~The State Education Assistance Authority, in consultation with the State Board of Education, shall develop criteria for awarding scholarship loans from the fund shall include measures ~~the Fund.~~ These criteria shall include:

- (1) Measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals.
- (2) North Carolina residency. – For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.
- (3) The geographic areas or subjects of instruction in which the demand for teachers is greatest.
- (4) To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.
- (5) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including the following:
  - a. Consideration of the appropriate numbers of minority applicants and applicants from diverse socioeconomic backgrounds to receive scholarships pursuant to this section.
  - b. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of teaching.

(c) ~~The Superintendent of Public Instruction~~State Education Assistance Authority may earmark each year up to twenty percent (20%) of the funds available for scholarship loans each year under this section for awards to applicants ~~who have been employed for at least one year as teacher assistants and who are currently employed as~~

~~teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.~~for the Teacher Assistant Scholarship Fund established in G.S. 116-209.35.

~~The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed child care center in North Carolina."~~

**SECTION 9.17.(d)** G.S. 115C-471 recodified by subsection (b) of this section as G.S. 116-209.34 reads as rewritten:

**"§ 116-209.34. Fund administered by ~~State Superintendent of Public Instruction; rules and regulations,~~State Education Assistance Authority; rule-making authority.**

~~(a) The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under rules adopted by the State Board of Education and subject to the following directions and limitations:~~The State Education Assistance Authority shall establish the terms and conditions for the scholarship loans consistent with the following:

- ~~(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State may apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand five hundred dollars (\$2,500) per academic school year. An applicant who has been employed for at least one year as a teacher assistant and who is currently employed as a teacher assistant may apply for a scholarship loan from funds earmarked for teacher assistants in the amount of not more than one thousand two hundred dollars (\$1,200) per academic school year.~~The loan amount shall be not more than four thousand dollars (\$4,000) per academic school year for a maximum of four years for applicants who are pursuing a college degree to become a teacher.
- ~~(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education Authority that bear interest at the rate of ten percent (10%) per annum from and after September 1 following~~

~~fulfillment by a prospective teacher of the requirements for a certificate based upon the entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans, the notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of the scholarship loans; or in the event any such scholarship is terminated under the provisions of subdivision (3) of this section, the notes shall bear interest from the date of termination. A minor recipient who signs a note shall also obtain the endorsement thereon by a parent, if there be a living parent, unless the endorsement is waived by the Superintendent of Public Instruction. The minor recipient shall be obligated upon the note as fully as if the recipient were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon the notes.~~year, beginning September 1 after graduation, or immediately after termination of the scholarship loan, whichever is earlier.

- (3) ~~Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until the recipient has qualified for a certificate based upon the entry level degree, but the recipient shall not be so eligible for more than the minimum number of years normally required for qualifying for the certificate. The permanent withdrawal of any recipient from college or failure of the recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction shall immediately forfeit the recipient's right to retain the scholarship and subject the scholarship to termination by the State Superintendent of Public Instruction in the Superintendent's discretion. A scholarship loan shall be terminated upon the recipient's withdrawing from school or a finding by the Authority that the recipient fails to meet the standards set by the Authority. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.~~
- (4) ~~Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a certificate based upon the entry level degree or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of the loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered by August 31 of the seventh school year following graduation.~~
- (5)(4) ~~For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of the loan equal to the loan amount for a school year as provided in the note plus credit for the total interest accrued on that~~

~~amount. Also, the recipient of the loan shall receive credit upon the total amount due by reason of all four years of the loan if the recipient teaches for three consecutive years. The Authority shall forgive a four-year loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Authority shall also forgive a four-year loan if, within seven years after graduation, the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. In lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof that has not been canceled by the State Board of Education by reason of teaching service rendered. For loans of less than four years, the Authority shall forgive one year for each year the recipient teaches, within four years of graduation, at a North Carolina public school or a school operated by the United States government in North Carolina.~~

- ~~(6)(5) If any recipient of a scholarship loan dies during the period of attendance at a college or university under a scholarship loan or before the scholarship loan is satisfied by payment or teaching service, any balance shall be automatically canceled.~~

~~If any recipient of a scholarship loan fails to fulfill the recipient's obligations under subdivision (4) of this section, other than as provided above, the amount of the loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill the recipient's obligations. The Authority may forgive or reduce any loan payment if the Authority considers that extenuating circumstances exist that would make teaching or repayment impossible.~~

- ~~(7)(6) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to factors and circumstances such as aptitude, purposefulness, scholarship, character, financial need, and geographic areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference for scholarship loans, except for the scholarship loans from funds earmarked for teacher assistants, shall be given to high school seniors in the awarding of scholarships. In awarding scholarship loans from funds earmarked for teacher assistants, preference shall be given to applicants who have already earned a baccalaureate degree or who have been formally admitted to an approved teacher education~~

~~program in North Carolina.~~The Authority shall ensure that all repayments, including the accrued interest, are placed in the Fund.

(b) The State Education Assistance Authority, in consultation with the State Board of Education, shall adopt rules to implement G.S. 116-209.33, 116-209.34, and 116-209.35."

**SECTION 9.17.(e)** This section becomes effective January 1, 2006, and applies to scholarship loans awarded on or after that date.

## **UNIVERSITY SYSTEM AND COMMUNITY COLLEGE SYSTEM JOINT STUDY OF HIGHER EDUCATION STRATEGY/AMEND REPORTING REQUIREMENT**

**SECTION 9.18.** Section 6.2 of S.L. 2004-179 reads as rewritten:

**"SECTION 6.2.** These studies shall be designed to provide information and recommendations that will assist the General Assembly in setting priorities for funding to address the strategic higher education needs of the State. The Board of Governors, the State Board, and their consultant shall periodically report their findings to a higher education programming subcommittee of the Joint Legislative Education Oversight Committee. The two boards and their consultant shall report the preliminary results of the study to the General Assembly and to the Joint Legislative Education Oversight Committee by ~~April 15, 2005, June 15, 2005,~~ and shall file a final report and recommendations with the General Assembly and the Joint Legislative Education Oversight Committee no later than ~~December 31, 2005.~~December 31, 2006."

## **DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND**

**SECTION 9.21.(a)** G.S. 116-41.15 reads as rewritten:

**"§ 116-41.15. Distinguished Professors Endowment Trust Fund; allocation; administration.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

- (1) On the basis of one three hundred thirty-four thousand dollar (\$334,000) challenge grant for each six hundred sixty-six thousand dollars (\$666,000) raised from private sources; or
- (2) On the basis of one one hundred sixty-seven thousand dollar (\$167,000) challenge grant for each three hundred thirty-three thousand dollars (\$333,000) raised from private ~~sources.~~sources; or
- (3) On the basis of one challenge grant of up to six hundred sixty-seven thousand dollars (\$667,000) for funds raised from private sources in twice the amount of the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1) or (1),~~ subdivision ~~(2) (2),~~ or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on a two to one basis.~~the basis of two dollars of private funds for every one dollar of State funds.~~

(b) For focused growth institutions and special needs institutions, the amount appropriated to the trust shall be allocated by the Board as follows:

- (1) On the basis of one five hundred thousand dollar (\$500,000) challenge grant for each five hundred thousand dollars (\$500,000) raised from private sources; or
- (2) On the basis of one two hundred fifty thousand dollar (\$250,000) challenge grant for each two hundred fifty thousand dollars (\$250,000) raised from private sources; or
- (3) On the basis of one challenge grant of up to one million dollars (\$1,000,000) for funds raised from private sources in the same amount as the challenge grant.

If an institution chooses to pursue the use of the allocated challenge grant funds described in either subdivision ~~(1)~~ (1), subdivision ~~(2)~~ (2), or subdivision (3) of this subsection, the challenge grant funds shall be matched by funds from private sources on a one to one basis: the basis of one dollar of private funds for every dollar of State funds.

(c) Matching funds shall come from contributions made after July 1, 1985, and pledged for the purposes specified by G.S. 116-41.14. Each participating constituent institution's board of trustees shall establish its own Distinguished Professors Endowment Trust Fund, and shall maintain it pursuant to the provision of G.S. 116-36 to function as a depository for private contributions and for the State matching funds for the challenge grants. The State matching funds shall be transferred to the constituent institution's Endowment Fund upon notification that the institution has received and deposited the appropriate amount required by this section in its own Distinguished Professors Endowment Trust Fund. Only the net income from that account shall be expended in support of the distinguished professorship thereby created."

**SECTION 9.21.(b)** G.S. 116-41.16 reads as rewritten:

**"§ 116-41.16. Distinguished Professors Endowment Trust Fund; contribution commitments.**

(a) For constituent institutions other than focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

- (1) A commitment to make a donation of at least six hundred sixty-six thousand dollars (\$666,000), as prescribed by G.S. 143-31.4, and an initial payment of one hundred eleven thousand dollars (\$111,000) to receive a grant described in G.S. 116-41.15(a)(1); or
- (2) A commitment to make a donation of at least three hundred thirty-three thousand dollars (\$333,000), as prescribed by G.S. 143-31.4, and an initial payment of fifty-five thousand five hundred dollars (\$55,500) to receive a grant described in G.S. 116-41.15(a)~~(2)~~; (2); or
- (3) A commitment to make a donation in excess of six hundred sixty-six thousand dollars (\$666,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(a)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment and shall be made on or before the anniversary date of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair.

(b) For focused growth institutions and special needs institutions, contributions may also be eligible for matching if there is:

- (1) A commitment to make a donation of at least five hundred thousand dollars (\$500,000), as prescribed by G.S. 143-31.4, and an initial payment of eighty-three thousand three hundred dollars (\$83,300) to receive a grant described in G.S. 116-41.5(b)(1); or
- (2) A commitment to make a donation of at least two hundred fifty thousand dollars (\$250,000), as prescribed by G.S. 143-31.4, and an initial payment of forty-one thousand six hundred dollars (\$41,600) to receive a grant described in G.S. 116-41.15(b)(2); or
- (3) A commitment to make a donation in excess of five hundred thousand dollars (\$500,000), as prescribed by G.S. 143-31.4, and an initial payment of one-sixth of the committed amount to receive a grant described in G.S. 116-41.15(b)(3);

and if the initial payment is accompanied by a written pledge to provide the balance within five years after the date of the initial payment. Each payment on the balance shall be no less than the amount of the initial payment. Pledged contributions may not be matched prior to the actual collection of the total funds. Once the income from the institution's Distinguished Professors Endowment Trust Fund can be effectively used pursuant to G.S. 116-41.17, the institution shall proceed to implement plans for establishing an endowed chair."

**SECTION 9.21.(c)** G.S. 116-41.17 reads as rewritten:

**"§ 116-41.17. Distinguished Professors Endowment Trust Fund; establishment of chairs.**

When the sum of the challenge grant and matching funds in the ~~Scholars'~~ Distinguished Professors Endowment Trust Fund reaches:

- (1) One million dollars (\$1,000,000), if the sum of funds described in ~~G.S. 116-41.15(1); or~~ G.S. 116-41.15(a)(1) or G.S. 116-41.15(b)(1); or
- (2) Five hundred thousand dollars (\$500,000), if the sum of funds described in ~~G.S. 116-41.15(2);~~ G.S. 116-41.15(a)(2) or G.S. 116-41.15(b)(2); or
- (3) An amount up to two million dollars (\$2,000,000), if the sum of funds described in G.S. 116-41.15(a)(3) or G.S. 116-41.15(b)(3);

the board of trustees may recommend to the Board, for its approval, the establishment of an endowed chair or chairs. The Board, in considering whether to approve the recommendation, shall include in its consideration the programs already existing in The

University of North Carolina. If the Board approves the recommendation, the chair or chairs shall be established. The chair or chairs, the property of the constituent institution, may be named in honor of a donor, benefactor, or honoree of the institution, at the option of the board of trustees."

**UNC MAY ENCOURAGE THE ESTABLISHMENT OF PRIVATE, NONPROFIT CORPORATIONS TO SUPPORT THE UNIVERSITY SYSTEM AND ASSIGN UNC EMPLOYEES TO ASSIST WITH THOSE CORPORATIONS**

**SECTION 9.22.** Article 1 of Chapter 116 of the General Statutes is amended by adding a new Part to read:

"Part 2B. Private, Nonprofit Corporations.

**"§ 116-30.20. Establishment of private, nonprofit corporations.**

The Board of Governors of The University of North Carolina shall encourage the establishment of private, nonprofit corporations to support the constituent institutions of The University of North Carolina and The University System. The President of The University of North Carolina and the chancellors of the constituent institutions may assign employees to assist with the establishment and operation of a nonprofit corporation and may make available to the corporation office space, equipment, supplies, and other related resources; provided, the sole purpose of the corporation is to support The University of North Carolina or one or more of its constituent institutions.

The board of directors of each such private, nonprofit corporation shall secure and pay for the services of The University System's internal auditors or employ a certified public accountant to conduct an audit of the financial accounts of the corporation. The board of directors shall transmit to the Board of Governors a copy of the annual financial audit report of the private, nonprofit corporation."

**ELIMINATE REPORTING REQUIREMENT FOR SCHOOL ADMINISTRATOR TRAINING PROGRAMS**

**SECTION 9.23.** G.S. 116-74.21 reads as rewritten:

**"§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.**

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than 12 school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the



State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) ~~The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of each biennium. The Board of Governors shall report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1, 1994, and annually thereafter.~~ the biennium and report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1 annually.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

~~(e) The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year."~~

## **CONTINUE ACADEMIC COMMON MARKET PROGRAM**

**SECTION 9.24.** Part 5 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

### **"§ 116-43.10. Academic Common Market program.**

(a) The Southern Regional Education Board operates an Academic Common Market program. Under this program, qualified students from participating states may apply to attend programs at public universities in participating states that are not available in their home state's university system. North Carolina's participation for graduate programs provides a cost-effective means of offering educational access for North Carolina residents. North Carolinians are able to attend graduate programs that are not available at The University of North Carolina at reduced rates, and the State avoids the cost associated with the development of new academic programs.

(b) The Board of Governors of The University of North Carolina may continue participation in the Southern Regional Education Board's Academic Common Market at the graduate program level. The Board of Governors shall examine the graduate programs offered in The University of North Carolina System and select for participation only those graduate programs that are likely to be unique or are not commonly available in other Southern Regional Education Board states. Out-of-state tuition shall be waived for students who are residents of other Southern Regional Education Board states and who are participating in the Academic Common Market program. If accepted into The University of North Carolina graduate programs that are part of the Academic Common Market, these students shall pay in-State tuition and shall be treated for all purposes of The University of North Carolina as residents of North Carolina.

(c) Once a student is enrolled in The University of North Carolina System under the Academic Common Market program, the student shall be entitled to pay in-State tuition as long as the student is enrolled in that graduate program. The Board of

Governors shall provide a report on the Academic Common Market program to the Joint Legislative Education Oversight Committee by September 2007 and each biennium thereafter."

### **TUITION WAIVER PROGRAM EXPANSION**

**SECTION 9.25.(a)** G.S. 116-143.1 is amended by adding a new subsection to read:

"(m) Notwithstanding subsection (b) of this section, a person who is a full-time employee of The University of North Carolina, or is the spouse or dependent child of a full-time employee of The University of North Carolina, and who is a legal resident of North Carolina, qualifies as a resident for tuition purposes without having maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes."

**SECTION 9.25.(b)** The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall study the feasibility of a tuition waiver exchange program under which full-time employees of The University of North Carolina would be allowed to take a specified number of courses at a community college without paying tuition, and full-time employees of a community college would be allowed to take a specified number of courses at a constituent institution of The University of North Carolina without paying tuition. The Boards shall report the results of this study to the Joint Legislative Education Oversight Committee by April 1, 2006.

### **BRODY SCHOOL OF MEDICINE AT ECU/MEDICARE RECEIPTS/FAMILY MEDICINE CENTER**

**SECTION 9.26.(a)** G.S. 116-36.6 reads as rewritten:

**"§ 116-36.6. Brody School of Medicine at East Carolina University School of Medicine; University; Medicare receipts.**

The Brody School of Medicine at East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

- (1) The portion of the Medicare reimbursement generated through the effort and expense of the Brody School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.
- (2) ~~The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.~~
- (3) ~~The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this~~

~~subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects.~~

- (2a) Funds that were received pursuant to this section prior to July 1, 2005, and that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the Brody School of Medicine at East Carolina University and may be expended by the Brody School of Medicine for the family medicine center and for purposes consistent with its stated mission."

**SECTION 9.26.(b)** Subsections (b) and (c) of Section 87 of Chapter 321 of the 1993 Session Laws are repealed.

**SECTION 9.26.(c)** Notwithstanding any other provisions of law, the Board of Governors of The University of North Carolina may authorize the design and construction of a new capital project, a family medicine center, on the Health Sciences Campus of the Brody School of Medicine at East Carolina University, that would replace the existing family medicine facility that has reached capacity. The family medicine center is also used as a clinical teaching site for medical students, and the existing facility is functionally outdated for this purpose. The cost of the facility is estimated to be thirty million dollars (\$30,000,000). The Board of Governors of The University of North Carolina may authorize the financing of the project with funds available to the Brody School of Medicine at East Carolina University from Medicare reimbursements for education costs, gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

**SECTION 9.26.(d)** Effective July 1, 2005, the Brody School of Medicine Medical Faculty Practice Plan shall no longer be required to reimburse the General Fund for use of outpatient facilities built with General Fund monies.

## **SCHOLARSHIP STUDENT**

**SECTION 9.27.(a)** Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

**"§ 116-143.6. Full scholarship students attending constituent institutions.**

(a) Notwithstanding any other provision of law, if the Board of Trustees of a constituent institution of The University of North Carolina elects to do so, it may by resolution adopted consider as residents of North Carolina all persons who receive full scholarships to the institution from entities recognized by the institution and attend the

institution as undergraduate students. The aforesaid persons shall be considered residents of North Carolina for all purposes by The University of North Carolina.

(b) The following definitions apply in this section:

(1) 'Full scholarship' means a grant that meets the full cost for a student to attend the constituent institution for an academic year.

(2) 'Full cost' means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on-campus room and board.

(c) This section shall not be applied in any manner that violates federal law.

(d) This section shall be administered by the electing constituent institution so as to have no fiscal impact.

(e) In administering this section, the electing constituent institution shall maintain at least the current number of North Carolina residents admitted to that constituent institution."

**SECTION 9.27.(b)** This section applies to students who accept admission on or after July 1, 2005, to a constituent institution.

#### **ENHANCE NUTRITION IN UNIVERSITY AND COMMUNITY COLLEGE FOOD PROGRAMS**

**SECTION 9.28.(a)** For nutritional purposes, the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall adopt policies governing any food programs operated by the constituent institutions or local community colleges that prohibit: (i) the use of cooking oils in those food programs that contain trans-fatty acids, or (ii) the sale of processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

**SECTION 9.28.(b)** The policies adopted in compliance with this section shall be implemented internally by August 1, 2006, and shall apply to all contracts entered into or renewed on or after that date.

#### **GRANT-IN-AID/FIRE TRUCK FOR CULLOWHEE VOLUNTEER FIRE DEPT. TO HELP ENSURE ADEQUATE FIRE PROTECTION SERVICES TO WESTERN CAROLINA UNIVERSITY**

**SECTION 9.29.** Of the funds appropriated from the General Fund to the Board of Governors of The University of North Carolina, the sum of seven hundred fifteen thousand dollars (\$715,000) for the 2005-2006 fiscal year shall be allocated to Western Carolina University as a grant-in-aid for the Cullowhee Volunteer Fire Department, Inc., to use to purchase a 95-foot platform truck and equipment to ensure adequate fire protection services to Western Carolina University.

#### **WAIVE TUITION FOR A PERSON OF A CERTAIN AGE WHO IS OR WAS A WARD OF THE STATE AND WHO ATTENDS CLASSES AT ANY CONSTITUENT INSTITUTION OF THE UNIVERSITY OF NORTH CAROLINA OR ANY COMMUNITY COLLEGE**

**SECTION 9.30.(a)** G.S. 115B-2(a) is amended by adding a new subdivision to read:

"(5) Any child, if the child (i) is at least 17 years old but not yet 23 years old, (ii) is a ward of North Carolina or was a ward of the State at the time the child reached the age of 18, (iii) is a resident of the State; and (iv) is eligible for services under the Chaffee Education and Training Vouchers Program; but the waiver shall only be to the extent that there is any tuition still payable after receipt of other financial aid received by the student."

**SECTION 9.30.(b)** G.S. 115B-5 is amended by adding a new subsection to read:

"(c) The officials of the institutions charged with administration of this Chapter may require proof to verify that a person applying to the institution under G.S. 115B-2(5) is eligible for the benefits provided by this Chapter."

## **PHYSICAL EDUCATION – COACHING SCHOLARSHIP LOAN**

**SECTION 9.31.** Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

### **"§ 116-209.36. Physical Education – Coaching Scholarship Loan Fund.**

(a) There is established the Physical Education – Coaching Scholarship Loan Fund. The purpose of the Fund is to provide scholarship loans to students who are pursuing college degrees to become public schoolteachers and coaches or assistant coaches. Coaching Fellows shall be offered a curriculum that advances skills in physical education and coaching and that instills a strong motivation not only to remain in the coaching profession but to provide leadership in the schools where they coach. The State Education Assistance Authority shall administer the Fund. The Fund shall provide 25 scholarship loans per year.

(b) Criteria for awarding the scholarship loans shall be developed by the State Education Assistance Authority in consultation with the Board of Governors of The University of North Carolina and shall include all of the following:

- (1) An applicant shall be enrolled in an accredited bachelors degree program in an institution of higher education in North Carolina.
- (2) All students shall enter into a legal agreement and promissory note with the Authority to accept employment as a coach or coaching assistant in an elementary or secondary school in North Carolina in exchange for receiving any funds, which agreement shall include stipulation that the student agrees to accept employment in rural or other need-based counties.
- (3) An applicant shall be a resident of North Carolina. For purposes of this section, residency shall be determined by the same standard as residency for tuition purposes pursuant to G.S. 116-143.1.
- (4) Any additional criteria that the State Education Assistance Authority considers necessary to administer the Fund effectively, including all of the following:

- a. Consideration of applicants from diverse backgrounds to receive scholarships pursuant to this section.
- b. Consideration of the academic qualifications of the individuals applying to receive funds.
- c. Consideration of the commitment an individual applying to receive funds demonstrates to the profession of coaching.

(c) The State Education Assistance Authority shall: (i) prepare a clear written explanation of the Physical Education – Coaching Scholarship Loan Fund and the information regarding the availability and criteria for awarding the scholarships, and (ii) provide that information to the appropriate counselors in each local school system and shall charge those counselors to inform students about the scholarships and to encourage them to apply for the scholarships.

(d) The State Education Assistance Authority shall administer the Fund and shall ensure that the loan amount is limited to four thousand dollars (\$4,000) per recipient per year.

(e) The Authority shall ensure that the following loan cancellations and repayment schedules apply to all funds distributed pursuant to this section:

- (1) The individual who graduates with a bachelors degree and who works as a school coach or coaching assistant in a rural or other need-based area of North Carolina shall have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment shall cancel one academic year's loan.
- (2) The individual who graduates with a bachelors degree and who works as a school coach or assistant coach in a rural or other need-based area of North Carolina for the equivalent of the total number of academic years funds were received shall have the entire loan cancelled.
- (3) The individual who graduates with a bachelors degree and who does not work as a school coach or assistant coach in a rural or other need-based area of North Carolina for any or all of the equivalent of the number of years funds were received shall repay the loan to the Authority according to a schedule prescribed in the promissory note, plus ten percent (10%) annual interest.
- (4) The individual who does not graduate with a bachelors degree shall repay the loan according to a schedule prescribed by the Authority, not to exceed fifteen percent (15%) annual interest. In establishing a schedule and interest rate, the Authority shall take into consideration the reasons the individual did not graduate with a bachelors degree.

The Authority shall ensure that all repayments, including accrued interest, shall be placed in the Fund.

The Authority may forgive or reduce any loan repayment if the Authority considers that extenuating circumstances exist that would make repayment impossible.

(f) The State Education Assistance Authority, in consultation with the Board of Governors of The University of North Carolina, shall adopt rules to implement this section.

(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by March 1 each year regarding the Fund and scholarship loans awarded from the Fund."

## **NURSING SCHOLARS PROGRAM**

**SECTION 9.33.** G.S. 90-171.61 is amended by adding a new subsection to read:

"(b1) If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in a baccalaureate nursing program, but is unable to pursue the course of study in nursing for a semester due to limited faculty resources at the institution for that semester, then the recipient shall continue to receive the scholarship loan for that semester and shall not be required to forfeit or repay the scholarship loan for that semester provided that the recipient remains otherwise eligible for the program. This waiver shall be valid for only one semester of study and may extend a recipient's eligibility for funding under the program by no more than one semester."

## **PROFESSIONAL DEVELOPMENT PROGRAMS FOR PUBLIC SCHOOL EMPLOYEES**

**SECTION 9.34.(a)** G.S. 115C-12(26) reads as rewritten:

### **"§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

- ...
- (26) ~~Duty to Monitor and Make Recommendations Regarding Professional Development Programs. – The State Board of Education shall identify State and local needs for professional development for professional public school employees based upon the State's educational priorities for improving student achievement. The State Board also shall recommend strategies for addressing these needs. The strategies must be research based, proven in practice, and designed for data driven evaluation. The State Board shall report its findings and recommendations to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Board of Governors of The University of North Carolina prior to January 15, 2002, and shall review, revise, and resubmit those findings and recommendations annually thereafter. The State Board shall evaluate the reports~~

~~submitted by the Board of Governors under G.S. 116-11(12a) to determine whether the programs for professional development provided by the Center for School Leadership Development address the State and local needs identified by the State Board and whether the programs are using the strategies recommended by the State Board. Prior to January 15th of each year, the State Board shall report the results of its analysis to the Board of Governors and to the Joint Legislative Education Oversight Committee. Education, in collaboration with the Board of Governors of The University of North Carolina, shall identify and make recommendations regarding meaningful professional development programs for professional public school employees. The programs shall be aligned with State education goals and directed toward improving student academic achievement. The State Board shall annually evaluate and, after consultation with the Board of Governors, make recommendations regarding professional development programs based upon reports submitted by the Board of Governors under G.S. 116-11(12a)."~~

**SECTION 9.34.(b)** G.S. 116-11(12a) reads as rewritten:

**"§ 116-11. Powers and duties generally.**

The powers and duties of the Board of Governors shall include the following:

...

(12a) ~~Notwithstanding any other law, the~~The Board of Governors of The University of North Carolina shall implement, administer, and revise programs for meaningful professional development for professional public school employees ~~in accordance with~~based upon the evaluations and recommendations made by the State Board of Education under G.S. 115C-12(26). The programs shall be aligned with State education goals and directed toward improving student academic achievement. The Board of Governors shall submit to the State Board of Education an annual written report that uses data to assess and evaluate the effectiveness of the programs for professional development offered by the Center for School Leadership Development. The report shall clearly document how the programs address the State needs identified by the State Board of Education and whether the programs are utilizing the strategies recommended by the State Board. The Board of Governors also shall submit this report to the Joint Legislative Education Oversight Committee, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives prior to September 15th of each year.The Board of Governors shall submit to the State Board of Education an annual report evaluating the professional development programs administered by the Board of Governors."

**STUDY IN-STATE TEACHER TUITION BENEFIT**



**SECTION 9.35.** The Joint Legislative Education Oversight Committee shall study the current law regarding the in-State tuition rate available to certain teachers for courses relevant to teacher certification or professional development as a teacher. In its study, the Committee shall consider the difficulty some teachers have in establishing North Carolina as their domicile, the fact that school systems on the borders of the State often recruit nonresidents who commute from their homes to teach in the North Carolina public school system and so are unable to establish this State as their domicile and any other relevant issues. The Committee shall make an interim report regarding its findings and recommendations to the 2005 General Assembly by May 30, 2007, and shall make a final report of its findings and recommendations to the 2007 General Assembly.

### **CENTER FOR CRAFT, CREATIVITY, AND DESIGN**

**SECTION 9.37.** Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the Center for Craft, Creativity, and Design at the University of North Carolina at Asheville, the sum of two hundred thousand dollars (\$200,000) in recurring funds for the 2005-2006 fiscal year shall be held in reserve for the Center for Craft, Creativity, and Design at the University of North Carolina at Asheville. The funds shall be disbursed to the University of North Carolina at Asheville when the Center receives the interest earnings from an endowment for graduate scholarships at the Center.

## **PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **INFORMATION TECHNOLOGY**

**SECTION 10.1.(a)** To support its information technology initiatives, the Department of Health and Human Services shall develop the following:

- (1) A detailed business plan.
- (2) An information technology plan directly tied to business requirements.
- (3) An IT architecture.

The Department of Health and Human Services shall ensure that the planning documents extend three to five years and include detailed shortfall analyses and associated cost assessments. The Department of Health and Human Services shall forward the documents to the Office of Information Technology Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2005. The Office of Information Technology Services shall review the documents and report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 31, 2006.

**SECTION 10.1.(b)** The Department of Health and Human Services shall develop a project plan for each of its information technology projects. These plans shall include the following:

- (1) A detailed description of the project.
- (2) A description of how the project improves Department operations and service to customers.
- (3) The projected cost of the project by year and phase.
- (4) Deliverables required to implement each phase of the system.
- (5) The date that each deliverable is to be implemented.
- (6) The cost of implementing each deliverable.
- (7) What capabilities each deliverable adds to the project.

**SECTION 10.1.(c)** The Department of Health and Human Services shall provide the plans to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005, with subsequent updates provided quarterly. The Department of Health and Human Services shall notify the Division of Fiscal Research within 10 days when costs, completion dates, or system capabilities change and provide a report detailing the impact of the change.

**SECTION 10.1.(d)** The Department of Health and Human Services shall not spend more than the amounts appropriated by the General Assembly for information technology projects and may not allocate funds appropriated for one information technology project to any other information technology project.

**SECTION 10.1.(e)** The Department of Health and Human Services shall use funds appropriated for the 2005-2006 and 2006-2007 fiscal years for the North Carolina Families Accessing Services through Technology (NC FAST) program only for program-specific development, deliverables, and maintenance costs associated with the NC FAST program.

## **OFFICE OF POLICY AND PLANNING**

**SECTION 10.2.** Article 3 of Chapter 143B is amended by adding the following new Part to read:

"Part 34. Office of Policy and Planning.

**"§ 143B-216.70. Office of Policy and Planning.**

(a) To promote coordinated policy development and strategic planning for the State's health and human services systems, the Secretary of Health and Human Services shall establish an Office of Policy and Planning from existing resources across the Department. The Director of the Office of Policy and Planning shall report directly to the Secretary and shall have the following responsibilities:

- (1) Coordinate the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.
- (2) Development of a departmental process for the development and implementation of new policies, plans, and rules.
- (3) Development of a departmental process for the review of existing policies, plans, and rules to ensure that departmental policies, plans, and rules are relevant.

- (4) Coordination and review of all departmental policies before dissemination to ensure that all policies are well-coordinated within and across all programs.
- (5) Implementation of ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.
- (6) Review, disseminate, monitor, and evaluate best practice models.

(b) Under the direction of the Secretary of Health and Human Services, the Director of the Office of Policy and Planning shall have the authority to direct Divisions, offices, and programs within the Department to conduct periodic reviews of policies, plans, and rules and shall advise the Secretary when it is determined to be appropriate or necessary to modify, amend, and repeal departmental policies, plans, and rules. All policy and management positions within the Office of Policy and Planning are exempt positions as that term is defined in G.S. 126-5."

**SENIOR PRESCRIPTION DRUG ACCESS PROGRAM FUNDING**

**SECTION 10.3.** The Director of the Budget shall use available funds up to one million five hundred thousand dollars (\$1,500,000) in the 2005-2006 fiscal year to fully fund the Senior Prescription Drug Access Program through December 31, 2005, if there is a shortfall of funds from the Health and Wellness Trust Fund, and the funds are not sufficient to provide drug acquisition services under the Program through December 31, 2005.

**SENIOR CARES PROGRAM ADMINISTRATION/AUTOMATIC ENROLLMENT MEDICARE PRESCRIPTION DRUG PROGRAM**

**SECTION 10.4.(a)** The Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund. The Department may use funds appropriated in this act to administer the Senior Cares prescription drug assistance program.

**SECTION 10.4.(b)** In order to ensure prescription drug coverage under the Medicare Part D Prescription Drug Program for seniors who are eligible but not automatically enrolled in the Medicare program by the federal government, the Department of Health and Human Services may enroll senior citizens into a federally approved Medicare Prescription Drug Plan, as follows:

- (1) Current and future participants in the Senior Cares prescription drug assistance program whose income is not more than one hundred thirty-five percent (135%) of the federal poverty level are eligible for automatic enrollment.
- (2) Prior to automatic enrollment, the Department shall give the individual the opportunity to decline automatic enrollment.

No State funds shall be used for the enrollment of senior citizens into the Medicare Prescription Drug Plan.

**SECTION 10.4.(c)** The Senior Cares prescription drug access program expires December 31, 2005. The Department of Health and Human Services may conduct administrative activities after December 31, 2005, related to closing the program, including paying claims incurred before December 31, 2005, but received after that date.

**NONMEDICAID REIMBURSEMENT CHANGES**

**SECTION 10.5.** Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

<u>Family Size</u>	<u>Medical Eye Care Adults</u>	<u>Rehabilitation Except DSB Over 55 Grant</u>	<u>Other</u>
1	\$4,860	\$8,364	\$4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,821	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for adults 55 years of age or older who qualify for services through the Division of Services for the Blind, Independent Living Rehabilitation Program, shall be two hundred percent (200%) of the federal poverty guidelines, as revised annually by the United States

Department of Health and Human Services and in effect on July 1 of each fiscal year. The eligibility level for adults in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred fifty percent (150%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

<u>Income</u> (% of poverty)	<u>State Participation</u>	<u>Client Participation</u>
0-150%	100%	0%
151-200%	75%	25%
201-250%	50%	50%
251-300%	25%	75%
300% and over	0%	100%

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

## **PHYSICIAN SERVICES**

**SECTION 10.6.** With the approval of the Office of State Budget and Management, the Department of Health and Human Services may use funds appropriated in this act for across-the-board salary increases and performance pay to offset similar increases in the costs of contracting with private and independent universities for the provision of physician services to clients in facilities operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This offsetting shall be done in the same manner as is currently done with the constituent institutions of The University of North Carolina.

## **LIABILITY INSURANCE**

**SECTION 10.7.(a)** The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars (\$1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human

Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

**SECTION 10.7.(b)** The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

**SECTION 10.7.(c)** The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

## **DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES**

**SECTION 10.8.** Part 1 of Article 3 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

**"§ 143B-139.6B. Department of Health and Human Services; authority to deduct payroll for child care services.**

Notwithstanding G.S. 143-3.3 and pursuant to rules adopted by the State Controller, an employee of the Department of Health and Human Services may, in writing, authorize the Department to periodically deduct from the employee's salary or wages paid for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department."

## **COMMUNITY HEALTH CENTERS FUNDS**

**SECTION 10.9.(a)** Of the funds appropriated in this act for Community Health Grants, the sum of two million dollars (\$2,000,000) in recurring funds for the 2005-2006 fiscal year, and the sum of two million dollars (\$2,000,000) in recurring funds for the 2006-2007 fiscal year shall be used for federally qualified health centers, for those health centers that meet the criteria for federally qualified health centers, and for State-designated rural health centers and public health departments and other clinics to:

- (1) Increase access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations;
- (2) Establish community health center services in counties where no such services exist;
- (3) Create new services or augment existing services provided to uninsured or medically indigent patients, including primary care and

preventative medical services, dental services, pharmacy, and behavioral health; and

- (4) Increase capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

Grant funds may not be used to enhance or increase compensation or other benefits of personnel, administrators, directors, consultants, or any other parties. Grant funds may not be used to supplant federal funds traditionally received by federally qualified community health centers and may not be used to finance or satisfy any existing debt. The Department of Health and Human Services shall distribute funds on the basis of the availability of other funds for the agency, and also on the basis of incidence of poverty or percentage of indigent clients served.

**SECTION 10.9.(b)** The Office shall work with the North Carolina Community Health Center Association (hereafter "NCCHCA") and the North Carolina Public Health Association (hereafter "NCPHA") to establish an advisory committee to develop an objective and equitable process for awarding grant funds. The Office shall also develop auditing and accountability procedures. Not more than one percent (1%) of the funds appropriated in this section may be used to reimburse the Office for administering the grant program in collaboration with the NCCHCA and the NCPHA.

**SECTION 10.9.(c)** Recipients of grant funds shall provide to the Office annually a written report detailing the number of additional uninsured and medically indigent patients that are cared for, the types of services that were provided, and any other information requested by the Office as necessary for evaluating the success of the grant program.

**SECTION 10.9.(d)** The Office shall work with the NCCHCA and NCPHA to study and present recommendations for continuing funds to support the expansion of community health centers, State-designated rural health centers, and public health departments to serve more of the State's uninsured and indigent population. The Office shall submit the report to the 2006 Regular Session of the 2005 General Assembly upon its convening.

## **PROVIDER REIMBURSEMENT RATES**

**SECTION 10.10.** Except for rate increases funded in this act, the Department of Health and Human Services shall maintain reimbursement rates paid to service providers at fiscal year 2004-2005 levels during the 2005-2006 and 2006-2007 fiscal years. Exceptions made by the Department shall be made on a case-by-case basis and must be approved by the Office of the Secretary. Changes in rate structures that result in lower payments to the providers are exempted from this requirement. As used in this section, "service providers" includes subcontractors, such as counties, area agencies on aging, departments of social services, departments of public health, child developmental services agencies, and local management entities.

## **PROVIDER TRACKING DATABASE SYSTEM**

**SECTION 10.10A.** The Department of Health and Human Services shall develop a proposal for the planning, development, and implementation of a provider

tracking database system ("System"). The purpose of the System is to monitor the performance and provide effective oversight of all provider facilities serving vulnerable populations and shall generate demographic data regarding the facilities for use by monitors, investigators, and the public. The Department shall submit the proposal and other required documentation to the Office of State Budget and Management (OSBM) and the Office of Information Technology Services (ITS) for their review and approval. If approved by the OSBM and ITS, the Department shall submit the approved proposal and documentation not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division for review in determining whether and to what extent funds should be appropriated for System implementation.

### **FUNDS FOR JIM "CATFISH" HUNTER CHAPTER OF THE ALS ASSOCIATION**

**SECTION 10.10B.** Funds appropriated in this act for the Jim "Catfish" Hunter Chapter of the ALS Association shall be expended only for services provided within North Carolina.

### **MEDICAID**

**SECTION 10.11.(a)** Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

- (1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Health and Human Services.
- (2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.
- (3) Nursing facilities. – Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Health and Human Services. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare. The Division of Medical Assistance shall allow nursing facility providers sufficient time from the effective date of this act to certify additional



Medicare beds if necessary. In determining the date that the requirements of this subdivision become effective, the Division of Medical Assistance shall consider the regulations governing certification of Medicare beds and the length of time required for this process to be completed.

- (4) Intermediate care facilities for the mentally retarded. – As prescribed in the State Plan as established by the Department of Health and Human Services.
- (5) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per prescription for generic drugs and four dollars (\$4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". The Department shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on authorizations, limitations, and reviews established under this subparagraph, including limitations on monthly brand-name and generic prescriptions as well as restrictions on the total number of medications. The Department shall submit the report not later than May 1, 2006.

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for atypical

antipsychotic drugs and drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary". An initial prescription order for an atypical antipsychotic drug or a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of: (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, and major depressive disorder, or (ii) HIV/AIDS.

- (6) Physicians, chiropractors, podiatrists, optometrists, dentists, certified nurse midwife services, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services. Payments for dental services are subject to the provisions of subsection (g) of this section.
- (7) Community Alternative Program, EPSDT screens. – Payment to be made in accordance with the rate schedule developed by the Department of Health and Human Services.
- (8) Home health and related services, private duty nursing, clinic services, prepaid health plans, durable medical equipment. – Payment to be made according to reimbursement plans developed by the Department of Health and Human Services.
- (9) Medicare Buy-In. – Social Security Administration premium.
- (10) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.

- (11) Hearing aids. – Wholesale cost plus a dispensing fee to the provider.
- (12) Rural health clinic services. – Provider-based, reasonable cost; nonprovider-based, single-cost reimbursement rate per clinic visit.
- (13) Family planning. – Negotiated rate for local health departments. For other providers, see specific services, for instance, hospitals, physicians.
- (14) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.
- (15) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.
- (16) Ambulatory surgical centers. – Payment as prescribed in the reimbursement plan established by the Department of Health and Human Services.
- (17) Medicare crossover claims. – By not later than October 1, 2005, the Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services.
- (18) Physical therapy and speech therapy. – Services limited to EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services. Physical therapy (including occupational therapy) and speech therapy services are subject to prior approval and utilization review.
- (19) Personal care services. – Payment in accordance with the State Plan approved by the Department of Health and Human Services.
- (20) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
- (21) Hospice. – Services may be provided in accordance with the State Plan developed by the Department of Health and Human Services.
- (22) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:
  - a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services

not to exceed the upper limits established in federal regulations, and

- b. For children eligible for EPSDT services provided by:
  - 1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and
  - 2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.
- c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and certified clinical supervisors, Medicaid-eligible adults may be self-referred.
- d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

- e. The Department of Health and Human Services shall not enroll licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addiction specialists, and certified clinical supervisors until all of the following conditions have been met:
1. The fiscal impact of payments to these qualified providers has been projected;
  2. Funding for any projected requirements in excess of budgeted Division of Medical Assistance funding has been identified from within State funds appropriated to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to support area mental health programs or county programs, or identified from other sources; and
  3. Approval has been obtained from the Office of State Budget and Management to transfer these State or other source funds from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to the Division of Medical Assistance. Upon approval and implementation, the Department of Health and Human Services shall, on a quarterly basis, provide a status report to the Office of State Budget and Management and the Fiscal Research Division.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2 of this subdivision shall be established by the Division of Medical Assistance.

- (23) Medically necessary prosthetics or orthotics. – Reimbursement in accordance with the State Plan approved by the Department of Health and Human Services, except that in order to be eligible for reimbursement, providers must be Board certified not later than July 1, 2005. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
- (24) Health insurance premiums. – Payments to be made in accordance with the State Plan adopted by the Department of Health and Human Services consistent with federal regulations.
- (25) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant

health goals; and services to meet federal EPSDT mandates. Services addressed by this subdivision are limited to those prescribed in the State Plan as established by the Department of Health and Human Services.

- (26) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Payment is limited to Medicaid-enrolled providers that purchase a performance bond in an amount not to exceed one hundred thousand dollars (\$100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may waive or limit the requirements of this paragraph for one or more classes of Medicaid-enrolled providers based on the provider's dollar amount of monthly billings to Medicaid or the length of time the provider has been licensed in this State to provide services. In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, emergency rooms, and mental health services subject to independent utilization review are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Health and Human Services where the life of the patient would be threatened without such additional care.

**SECTION 10.11.(b)** Allocation of Nonfederal Cost of Medicaid. – The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.

**SECTION 10.11.(c)** Co-Payment for Medicaid Services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation and required by this subsection in order to achieve reductions in the budget in fiscal years 2005-2006 and 2006-2007.

**SECTION 10.11.(d)** Medicaid and Work First Family Assistance, Income Eligibility Standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

<u>Family Size</u>	<u>Categorically Needy</u>	<u>Medically Needy</u>	
	<u>WFFA*</u>	<u>Families and Children Income Level</u>	<u>AA, AB, AD*</u>
1	\$4,344	\$2,172	\$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

\*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

**SECTION 10.11.(e)** The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to all elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines, as revised each April 1.

**SECTION 10.11.(f)** ICF and ICF/MR Work Incentive Allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

<u>Monthly Net Wages</u>	<u>Monthly Incentive Allowance</u>
\$1.00 to \$100.99	Up to \$50.00
\$101.00 to \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00.

**SECTION 10.11.(g)** Dental Coverage Limits. – Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

**SECTION 10.11.(h)** Exceptions to Service Limitations, Eligibility Requirements, and Payments. – Service limitations, eligibility requirements, and

payments bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient. The Department of Health and Human Services may proceed with planning and development work on the Program of All-Inclusive Care for the Elderly.

**SECTION 10.11.(i)** Volume Purchase Plans and Single Source Procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.

**SECTION 10.11.(j)** Cost-Containment Programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost-containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

**SECTION 10.11.(k)** For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

**SECTION 10.11.(l)** The Department of Health and Human Services shall provide Medicaid to 19-, 20-, and 21-year-olds in accordance with federal rules and regulations.

**SECTION 10.11.(m)** The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.
- (2) Effective until January 1, 2006, infants under the age of one with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.
- (3) Effective until January 1, 2006, children aged one through five with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. Effective January 1, 2006, children aged one through five with family incomes equal to or less than two



hundred percent (200%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.

- (4) Children aged six through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits.
- (5) The Department of Health and Human Services shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

**SECTION 10.11.(n)** Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.

**SECTION 10.11.(o)** The Division of Medical Assistance, Department of Health and Human Services, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

**SECTION 10.11.(p)** If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed the currently allocated funds for the new contract for the fiscal agent for the Medicaid Management Information System.

**SECTION 10.11.(q)** The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. Prior to the filing of these temporary or emergency rules with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

**SECTION 10.11.(r)** The Department shall report to the Fiscal Research Division of the Legislative Services Office and to the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services or the Joint Legislative Health Care Oversight Committee on any change it anticipates making in the Medicaid

program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). The reports shall be provided at the same time they are submitted to CMS for approval.

**SECTION 10.11.(s)** The Department of Health and Human Services shall provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty level. Of the funds appropriated in this act to the Division of Medical Assistance, the sum of seven hundred fifty thousand dollars (\$750,000) for the 2005-2006 fiscal year shall be used to provide the State-match for the family planning demonstration waiver approved by the federal government.

**SECTION 10.11.(t)** For the purposes of determining eligibility for Medical Assistance, the Department of Health and Human Services may apply federal transfer of assets policies, as described in Title XIX, section 1917(c) of the Social Security Act, including the attachment of liens, to (i) life estates purchased by or on behalf of the recipient, other than life estates excluded from countable resources under this section, and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing" under Title XIX, section 1902(r)(2) of the Social Security Act. The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse as defined in Title XIX, section 1917(c) of the Social Security Act. The Department shall exclude from countable resources any life estate in real property that is in the recipient's home, is measured by the recipient's life, and is the result of the transfer of a remainder interest.

Federal transfer of assets policies applied to "income producing" real property under Title XIX, section 1902(r)(2) of the Social Security Act shall become effective not earlier than October 1, 2001. Federal transfer of assets policies and attachment of liens applied to real property excluded as tenancy-in-common, or as nonhomesite property made "income producing" in accordance with this subsection shall become effective not earlier than November 1, 2002. Federal transfer of assets policies applied to life estates in accordance with this subsection shall become effective not earlier than October 1, 2005.

**SECTION 10.11.(u)** When implementing the Supplemental Security Income (SSI) method for considering equity value of income producing property, the Department shall, to the maximum extent possible, employ procedures to mitigate the hardship to Medicaid enrollees occurring from application of the Supplemental Security Income (SSI) method.

**SECTION 10.11.(v)** Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars (\$3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed policy change with the fiscal

analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars (\$3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars (\$3,000,000).

**SECTION 10.11.(w)** The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

- (1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the North Carolina Medical Society and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.
- (2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
  - a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
  - b. Notify all Medicaid providers of the proposed, new, or amended policy; and
  - c. Upon request, provide persons copies of the proposed medical coverage policy.
- (3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.
- (4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall, at least 15 days prior to its adoption:
  - a. Notify all Medicaid providers of the proposed policy;
  - b. Upon request, provide persons notice of amendments to the proposed policy; and
  - c. Accept additional oral or written comments during this 15-day period.

**SECTION 10.11.(x)** For the purposes of investigating and reducing client fraud and abuse, the Department of Health and Human Services, Division of Medical Assistance, shall, unless prohibited by federal law, include in the Medicaid enrollment process the requirement that the applicant for Medicaid consent to or authorize in writing the release of the applicant's medical records for the three years immediately preceding the application for Medicaid benefits. The Department shall obtain and use information from the applicant's medical records in a manner and form that complies with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), P.L.

104-191, as amended, and that protects the privacy of the information as required by other applicable federal or State law. In addition to fraud and abuse detection, the Department may require the applicant's consent for other purposes permitted by HIPAA and required or authorized by other applicable federal or State law.

**SECTION 10.11.(y)** The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall provide an opportunity for interested advocacy organizations to comment on restrictions imposed by the Department of Health and Human Services, Division of Medical Assistance, on the medications prescribed for Medicaid recipients, as authorized under subsection (a)(5) of this section. The Committee may report its findings or recommendations based on comments received to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before April 30, 2006.

#### **DISPOSITION OF DISPROPORTIONATE SHARE RECEIPTS**

**SECTION 10.12.(a)** Disproportionate share receipts reserved at the end of the 2005-2006 and 2006-2007 fiscal years shall be deposited with the Department of State Treasurer as nontax revenue for each of those fiscal years.

**SECTION 10.12.(b)** For each year of the 2005-2007 fiscal biennium, as it receives funds associated with Disproportionate Share Payments from State hospitals, the Department of Health and Human Services, Division of Medical Assistance, shall deposit up to one hundred million dollars (\$100,000,000) of these Disproportionate Share Payments to the Department of State Treasurer for deposit as nontax revenue. Any Disproportionate Share Payments collected in excess of one hundred million dollars (\$100,000,000) shall be reserved by the State Treasurer for future appropriations.

#### **COUNTY MEDICAID COST SHARE**

**SECTION 10.13.(a)** Effective July 1, 2000, the county share of the cost of Medicaid services currently and previously provided by area mental health authorities shall be increased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

**SECTION 10.13.(b)** Effective July 1, 2000, the county share of the cost of Medicaid Personal Care Services paid to adult care homes shall be decreased incrementally each fiscal year until the county share reaches fifteen percent (15%) of the nonfederal share by State fiscal year 2009-2010.

#### **MEDICAID COST CONTAINMENT ACTIVITIES**

**SECTION 10.14.** The Department of Health and Human Services may use not more than three million dollars (\$3,000,000) in the 2005-2006 fiscal year and not more than three million dollars (\$3,000,000) in the 2006-2007 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including

contracting for services or hiring additional staff. Medicaid cost-containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic stripped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost-containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost-containment activity and documentation of the amount of savings expected to be realized from the cost-containment activity. The Department shall provide a copy of proposals for expenditures under this section to the Fiscal Research Division.

#### **MEDICAID RESERVE FUND TRANSFER**

**SECTION 10.15.** Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143-23.2, the sum of fifty million dollars (\$50,000,000) for the 2005-2006 fiscal year and the sum of fifty million dollars (\$50,000,000) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143-23.2(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act.

#### **EXPAND COMMUNITY CARE OF NORTH CAROLINA MANAGEMENT TO ADDITIONAL MEDICAID RECIPIENTS**

**SECTION 10.17.(a)** The Department of Health and Human Services shall expand the scope of Community Care of NC care management model to recipients of Medicaid and dually eligible individuals with a chronic condition and long-term care needs. In expanding the scope, the Department shall focus on the Aged, Blind, and Disabled, and CAP-DA populations for improvement in management, cost-effectiveness, and local coordination of services through Community Care of NC and in collaboration with local providers of care. The Department shall target personal care services, private duty nursing, home health, durable medical equipment, ancillary professional services, specialty care, residential services, including skilled nursing facilities, home infusion therapy, pharmacy, and other services determined target-worthy by the Department. The Department shall pilot communitywide initiatives and shall expand statewide successful models.

**SECTION 10.17.(b)** The Department of Health and Human Services may work with the federal government to attain the necessary regulatory and policy relief to better align policy and economic incentives to improve care in the most cost-effective manner and attain savings through controlled utilization of services.

**SECTION 10.17.(c)** The Department of Health and Human Services may pay network and primary care providers an enhanced PMPM care management fee and shall also provide additional block grant funds for start-up during the pilot phase.

**SECTION 10.17.(d)** Community Care of NC and the Department of Health and Human Services shall review the prescribing of diagnostic testing by physicians to determine if overutilization is occurring. The Department shall include the results of the review in the report required under subsection (e) of this section. If the Department finds that overutilization is occurring, it shall implement a plan to reduce or eliminate the overutilization.

**SECTION 10.17.(e)** The Department of Health and Human Services shall report on the implementation of this section, including resulting savings and quality improvement benchmarks, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007.

### **TICKET TO WORK/MEDICAID ELIGIBILITY**

**SECTION 10.18.(a)** Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

**"§ 108A-54.1. Medicaid buy-in for workers with disabilities.**

(a) Title. – This act may be cited as the Health Coverage for Workers With Disabilities Act. The Department shall implement a Medicaid buy-in eligibility category as permitted under P.L. 106-170, Ticket to Work and Work Incentives Improvement Act of 1999. The Department shall establish rules, policies, and procedures to implement this act in accordance with this section.

(b) Definitions. – As used in this section, unless the context clearly requires otherwise:

- (1) 'FPG' means the federal poverty guidelines.
- (2) 'HCWD' means Health Coverage for Workers With Disabilities.
- (3) 'SSI' means Supplemental Security Income.
- (4) 'Ticket to Work' means the Ticket to Work and Work Incentives Improvement Act of 1999.

(c) Eligibility. – An individual is eligible for HCWD if:

- (1) The individual is at least 16 years of age and is less than 65 years of age;
- (2) The individual meets Social Security Disability criteria, or the individual has been enrolled in HCWD and then becomes medically improved as defined in Ticket to Work and as further specified by the Department. An individual shall be determined to be eligible under this section without regard to the individual's ability to engage in, or actual engagement in, substantial gainful activity as defined in section 223 of the Social Security Act (42 U.S.C. § 423(d)(4)). In conducting annual redetermination of eligibility, the Department may not determine that an individual participating in HCWD is no longer disabled based

solely on the individual's participation in employment or earned income;

(3) The individual's unearned income does not exceed one hundred fifty percent (150%) of FPG, and countable resources for the individual do not exceed the resource limit for the minimum community spouse resource standard under 42 U.S.C. § 1396r, and as further determined by the Department. In determining an individual's countable income and resources, the Department may not consider income or resources that are disregarded under the State Medical Assistance Plan's financial methodology, including the sixty-five-dollar (\$65.00) disregard, impairment-related work expenses, student earned-income exclusions, and other SSI program work incentive income disregards; and

(4) The individual is engaged in a substantial and reasonable work effort (employed) as provided in this subdivision and as further defined by the Department and allowable under federal law. For purposes of this subsection, "engaged in substantial and reasonable work effort" means all of the following:

- a. Working in a competitive, inclusive work setting, or self-employed.
- b. Earning at least the applicable minimum wage.
- c. Having monthly earnings above the SSI basic sixty-five-dollar (\$65.00) earned-income disregard.
- d. Being able to provide evidence of paying applicable Medicare, Social Security, and State and federal income taxes.

The Department may impose additional earnings requirements in defining "engaged in substantial and reasonable work effort" for individuals who are eligible for HCWD based on medical improvement.

Individuals who participate in HCWD but thereafter become unemployed for involuntary reasons, including health reasons, shall have continued eligibility in HCWD for up to 12 months from the time of involuntary unemployment, so long as the individual (i) maintains a connection with the workforce, as determined by the Department, (ii) meets all other eligibility criteria for HCWD during the period, and (iii) pays applicable fees, premiums, and co-payments.

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars (\$50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not

less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the North Carolina Health Choice Program."

**SECTION 10.18.(b)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of one hundred fifty thousand dollars (\$150,000) for the 2006-2007 fiscal year shall be used to support the expansion of Medicaid eligibility authorized under subsection (a) of this section.

**SECTION 10.18.(c)** Subsection (b) of this section becomes effective July 1, 2006. Subsection (a) of this section becomes effective January 1, 2007, or within 30 days after the date on which the MMIS becomes operational, as determined by the Department of Health and Human Services, whichever occurs later. Client enrollment shall begin not later than six months from the date subsection (a) becomes effective. The remainder of this section is effective when it becomes law.

### **MEDICAID PERSONAL CARE SERVICES LIMITATIONS**

**SECTION 10.19.(a)** The Department of Health and Human Services, Division of Medical Assistance, shall reduce the cost of providing personal care services under the Medicaid program by thirteen million seven hundred eleven thousand five hundred forty-two dollars (\$13,711,542) for the 2005-2006 fiscal year and by sixteen million one hundred fifteen thousand three hundred eighty-nine dollars (\$16,115,389) for the 2006-2007 fiscal year. The Department shall accomplish the reduction by implementing a utilization management system for Personal Care Services and Personal Care Services Plus. The management system may include reducing personal care services hours to 50 hours or otherwise managing personal care services. The Division of Medical Assistance shall work with Community Care of North Carolina (CCNC) to determine how CCNC can help with the review of the need for and utilization of personal care services.

**SECTION 10.19.(b)** The Division of Medical Assistance shall study and determine additional utilization/prior authorization systems for personal care services and other home- and community-based services that can be provided to individuals who meet medical criteria and that can be implemented when the new MMIS goes into effect. The Department of Health and Human Services, Division of Medical Assistance, shall report the plan for implementation of this section, including costs, not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

### **DDA GROUP HOME FUNDING**

**SECTION 10.19A.(a)** The Department of Health and Human Services may develop a plan to use State funds appropriated to support group homes for persons with developmental disabilities to expand the funding available under the CAP-MR/DD waiver and to use the increased waiver funds, in part, to pay for group home services.



In developing this plan, the Department shall ensure that the total funding available to the group homes is not reduced.

**SECTION 10.19A.(b)** The Department of Health and Human Services may submit a progress report on implementation of this section not later than February 1, 2006, and a final report not later than May 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

### **IMPLEMENT ELECTRONIC QUALITY PRESCRIPTION MANAGEMENT PROGRAM**

**SECTION 10.19B.** The Department of Health and Human Services, Division of Medical Assistance, shall implement an Electronic Quality Prescription Management program for prescription drugs through the use of personal data assistance (PDA) technology.

### **COMMUNITY ALTERNATIVE PROGRAMS REIMBURSEMENT SYSTEM**

**SECTION 10.20.(a)** The Department of Health and Human Services, Division of Medical Assistance, shall study developing a new system for reimbursing the Community Alternatives Programs. The new system shall:

- (1) Use a case-mix reimbursement system, similar to the one used by nursing facilities and home health agencies, to determine the level of care provided and the amount paid for the care provided;
- (2) Incorporate into the case-mix system the home environment and social support systems; and
- (3) Use the Resource Utilization Groups-III (RUG-III) to determine the level of need for Community Alternatives Programs services except for CAP-MR/DD program services.

**SECTION 10.20.(b)** Not later than May 1, 2006, the Department of Health and Human Services, Division of Medical Assistance, shall report on the development of the new system, including an implementation schedule. Full implementation of the new system shall be not later than January 1, 2007. The Department shall submit the report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

### **VERIFICATION OF STATE RESIDENCY FOR MEDICAL ASSISTANCE**

**SECTION 10.21A.(a)** Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

**"§ 108A-55.3. Verification of State residency required for medical assistance.**

**(a) At the time of application for medical assistance benefits, the applicant shall provide satisfactory proof that the applicant is a resident of North Carolina and that the**

applicant is not maintaining a temporary residence or abode incident to receiving medical assistance under this Part.

(b) An applicant may meet the requirements of subsection (a) of this section by providing at least two of the following documents:

- (1) A valid North Carolina drivers license or other identification card issued by the North Carolina Division of Motor Vehicles.
- (2) A current North Carolina rent or mortgage payment receipt, or current utility bill in the name of the applicant or the applicant's legal spouse showing a North Carolina address.
- (3) A valid North Carolina motor vehicle registration in the applicant's name and showing the applicant's current address.
- (4) A document showing that the applicant is employed in this State.
- (5) One or more documents proving that the applicant's domicile in the applicant's prior state of domicile has ended, such as closing of a bank account, termination of employment, or sale of a home.
- (6) The tax records of the applicant or the applicant's legal spouse, showing a current North Carolina address.
- (7) A document showing that the applicant has registered with a public or private employment service in this State.
- (8) A document showing that the applicant has enrolled the applicant's children in a public or private school or child care facility located in this State.
- (9) A document showing that the applicant is receiving public assistance or other services requiring proof of domicile, other than medical assistance, in this State.
- (10) Records from a health department or other health care provider located in this State showing the applicant's current North Carolina address.
- (11) A written declaration made under penalty of perjury from a person who has a social, family, or economic relationship with the applicant and who has personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (12) Current North Carolina voter registration card.
- (13) A document from the U.S. Department of Veterans Affairs, U.S. Military, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (14) Official North Carolina school records, signed by school officials, or diplomas issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities verifying the applicant's intent to live in North Carolina permanently or for an

indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(15) A document issued by the Mexican consular or other foreign consulate verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.

(c) For applicants, including those who are homeless or migrant laborers, who declare under penalty of perjury that they do not have two of the verifying documents in subsection (b) of this section, any other evidence that verifies residence may be considered. However, except for applicants of emergency Medicaid, a declaration, affidavit, or other statement from the applicant or another person that the applicant meets the requirements of G.S. 108A-24(6) is insufficient in the absence of other credible evidence. For applicants of emergency Medicaid, a declaration, affidavit, or other statement from the applicant's employer, clergy, or other person with personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment satisfies the requirements of this subsection.

(d) The Division of Medical Assistance shall not provide payment for medical assistance provided to an applicant unless or until the applicant has met the proof of residency requirements of this section.

(e) Unless otherwise provided for under Title 19 of the Social Security Act, a child under age 18 is a resident of the state where the child's parent or legal guardian is domiciled.

(f) This section does not apply to an applicant whose eligibility for medical assistance is excepted from State residency requirements under federal law.

(g) Nothing in this section shall be construed to establish North Carolina residency for a nonqualified alien who is present in North Carolina for a temporary or unspecified period of time unless the applicant is legally admitted for employment purposes."

**SECTION 10.21A.(b)** This section becomes effective January 1, 2006.

## **MEDICAID ESTATE RECOVERY TO INCLUDE LIENS ON REAL PROPERTY**

**SECTION 10.21C.(a)** G.S. 108A-70.5 reads as rewritten:

### **"§ 108A-70.5. Medicaid Estate Recovery Plan.**

(a) There is established in the Department of Health and Human Services, the Medicaid Estate Recovery Plan, as required by the Omnibus Budget Reconciliation Act of 1993, to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid the recipient.1993. The Department shall administer the program in accordance with applicable federal law and regulations, including those under Title XIX of the Social Security Act, 42 U.S.C. § 1396(p). To the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department may impose liens against real property, including the home, of a recipient of medical assistance. The Department shall file any liens imposed under this

section in the court where the property is located in the same manner as for any other lien under North Carolina law.

(b) As used in this section:

(1) "Medical assistance" means medical care services paid for by the North Carolina Medicaid Program on behalf of the recipient:

a. If the recipient of any age is receiving ~~these~~ medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and cannot reasonably be expected to be discharged to return home; or

b. If the recipient is 55 years of age or older and is receiving ~~these medical care services, including related hospital care and prescription drugs, for nursing facility services, personal care services, or home and community based services.~~one or more of the following medical care services:

1. Nursing facility services.
2. Home and community-based services.
3. Hospital care and prescription drugs related to nursing facility services or home and community-based services.
4. Personal care services.
5. Medicare premiums.
6. Private duty nursing.
7. Home health aide services.
8. Home health therapy.
9. Speech pathology services.

(2) "Estate" means all the real and personal property considered assets of the estate available for the discharge of debt pursuant to G.S. 28A-15-1.

(3) "Home" means property in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title to, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling.

(c) The amount the Department recovers from the estate of any recipient shall not exceed the amount of medical assistance made on behalf of the recipient and shall be recoverable only for medical care services prescribed in subsection (b) of this section. ~~The~~To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth-class creditor, as prescribed in G.S. 28A-19-6, for purposes of determining the order of claims against an estate; provided, however, that judgments in favor of other fifth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

(d) The Department of Health and Human Services shall adopt rules pursuant to Chapter 150B of the General Statutes to implement the ~~Plan, including rules to waive whole or partial recovery when this recovery would be inequitable because it would~~

~~work an undue hardship or because it would not be administratively cost effective and rules-Plan~~ to ensure that all recipients are notified that their estates are subject to recovery at the time they become eligible to receive medical assistance.

(e) Regarding trusts that contain the assets of an individual who is disabled as defined in Title 19 of Section 1014(a)(3) of the Social Security Act, as amended, if the trust is established and managed by a nonprofit association, to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the nonprofit association, the trust pays to the Department from these remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the North Carolina Medicaid Program."

**SECTION 10.21C.(b)** Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new sections to read:

**"§ 108A-70.6. Postponement of estate recovery required in cases of undue hardship.**

(a) The Department shall postpone or waive its claim pursuant to G.S. 108A-70.5, including the execution of a lien in whole or in part, when the Department determines that the enforcement of its claim would work an undue hardship to an heir or a beneficiary of the Medicaid recipient. Nothing in this section shall be construed to prevent the Department from enforcing its claim if the owner of the property sells or transfers ownership of the property that is subject to the Department's claim.

(b) A claim of undue hardship to an heir or beneficiary shall be made in writing to the Department within 30 days after the receipt of notification of the Medicaid lien or claim. The claim for hardship shall describe the financial circumstance of the heir or beneficiary and the basis for the claim.

(c) An undue hardship exists if:

(1) The property subject to the lien has a tax value that is equal to or less than thirty thousand dollars (\$30,000).

(2) The property subject to the Department's claim is the sole source of income for a surviving heir or beneficiary, and the loss of the net income derived from the property would result in the heir's or beneficiary's annual gross income to fall below one hundred percent (100%) of the federal poverty guidelines in the year in which the hardship is claimed; or

(3) The sale of the property would be required to satisfy the Department's claim, and all of the following conditions are met:

a. The heir or beneficiary resided in the decedent's home on a continual basis for at least 24 months immediately prior to the date of the recipient's death and the heir or beneficiary was using the property as a principal place of residence on the date of the recipient's death;

b. The heir or beneficiary has, from the time the Department first presents its claim for recovery against the deceased recipient's estate and after, annual gross income in the amount not

exceeding one hundred fifty percent (150%) of the federal poverty income standard;

- c. The heir or beneficiary owns no other real property or agrees to sell other real property in partial payment of the Department's claim; and
- d. The heir or beneficiary owns other assets not exceeding a net value of thirty thousand dollars (\$30,000).

**"§ 108A-70.7. Estate recovery not cost effective.**

The Department shall waive its claim or lien imposed under G.S. 108A-70.5 upon the Department's determination that:

- (1) The amount of Medicaid payments for services and benefits subject to recovery is less than eight thousand dollars (\$8,000); or
- (2) The assets subject to the Department's claim or lien are less than five thousand dollars (\$5,000).

**"§ 108A-70.8. Notice of estate recovery.**

(a) The Department shall provide each applicant for medical assistance, or the applicant's representative, written notice that:

- (1) Receipt of medical assistance may result in a Medicaid claim or lien upon the recipient's estate, including the recipient's home, to recover costs paid on behalf of the recipient for medical assistance in accordance with G.S. 108A-70.5; and
- (2) The Department may seek a lien against the real property of a recipient of any age before or after the recipient's death in the amount of assistance paid or to be paid for the recipient if the recipient is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and the Department determines, after notice and an opportunity for a hearing in accordance with applicable law, that the recipient cannot reasonably be expected to be discharged and return home.

(b) Notice under this section shall also explain the hardship conditions under which estate recovery, including the execution of a lien, may be postponed or waived.

**"§ 108A-70.9. County departments of social services to provide information.**

The Department may require the county department of social services administering medical assistance to gather and provide the Department with the information and administrative or legal assistance needed to recover medical assistance under G.S. 108A-70.5. The Department shall pay to the county department of social services an amount equal to twenty percent (20%) of the nonfederal share of recovery collected by the Department. The Department may withhold payments under this section for a county department's failure to comply with the Department's requirements under this section."

**SECTION 10.21C.(c)** This section becomes effective January 1, 2006, and applies to recipients of medical assistance on or after that date.

**MEDICAID STUDY**

**SECTION 10.21E.** The Department of Health and Human Services shall study Medicaid services for individuals who are dually eligible for Medicaid and Medicare, particularly including the Medicare Part D impact on these services, the financial impact on the State of Medicare clawback provisions, and efficiencies that can be realized in services for this dually eligible population. The study shall also include the impact on the Medicaid program as a whole. The Department shall report the results of the study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2006.

## **NC HEALTH CHOICE**

**SECTION 10.22.(a)** Effective January 1, 2006, the Department of Health and Human Services may allow up to three percent (3%) enrollment growth in the NC Health Choice Program every six months.

**SECTION 10.22.(b)** Effective January 1, 2006, G.S. 108A-70.21(a) reads as rewritten:

"(a) Eligibility. – The Department may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

(1) Children must:

- a. Be ~~under the age of 19;~~ between the ages of 6 through 18;
- b. Be ineligible for Medicaid, Medicare, or other federal government-sponsored health insurance;
- c. Be uninsured;
- d. Be in a family ~~that meets the following family income requirements:~~
  1. ~~Infants under the age of one year whose family income is from one hundred eighty five percent (185%) through two hundred percent (200%) of the federal poverty level;~~
  2. ~~Children age one year through five years whose family income is above one hundred thirty three percent (133%) through two hundred percent (200%) of the federal poverty level; and~~
  3. ~~Children age six years through eighteen years~~ whose family income is above one hundred percent (100%) through two hundred percent (200%) of the federal poverty level;
- e. Be a resident of this State and eligible under federal law; and
- f. Have paid the Program enrollment fee required under this Part.

(2) Proof of family income and residency and declaration of uninsured status shall be provided by the applicant at the time of application for Program coverage. The family member who is legally responsible for the children enrolled in the Program has a duty to report any change in the enrollee's status within 60 days of the change of status.

- (3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term "responsible parent" means a person who is under a court order to pay child support.

- (4) Except as otherwise provided in this section, enrollment shall be continuous for one year. At the end of each year, applicants may reapply for Program benefits."

**SECTION 10.22.(c)** G.S. 108A-70.21(b) reads as rewritten:

"(b) Benefits. – Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost-sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan, including optional prepaid plans. ~~Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, ninety percent (90%) of the average wholesale price for the prescription drug or the amounts published by the Centers for Medicare and Medicaid Services plus a dispensing fee of five dollars and sixty cents (\$5.60) per prescription for generic drugs and four dollars (\$4.00) per prescription for brand name drugs. All other health care providers providing services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any copayments assessed to enrollees under this Part.~~

~~No child enrolled in the Plan's self-insured indemnity program shall be required by the Plan to change health care providers as a result of being enrolled in the Program.~~

In addition to the benefits provided under the Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

- (1) Dental: Oral examinations, teeth cleaning, and scaling twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, fluoride applications twice during a 12-month period, fluoride varnish, sealants, simple extractions, therapeutic pulpotomies, prefabricated stainless steel crowns, and



routine fillings of amalgam or other tooth-colored filling material to restore diseased teeth. No benefits are to be provided for services under this subsection that are not performed by or upon the direction of a dentist, doctor, or other professional provider approved by the Plan nor for services and materials that do not meet the standards accepted by the American Dental Association.

- (2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval of the Plan. Upon prior approval by the Plan, refractions may be covered more often than once every 12 months.
- (3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other hearing aid specialist approved by the Plan. Prior approval of the Plan is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

~~The Department may provide services to children aged birth through five years enrolled in the Program through the State Medical Assistance managed care program. Services provided through the managed care program shall be paid from Program funds.~~

Effective January 1, 2006, the Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid."

**SECTION 10.22.(d)** G.S. 108A-70.21 is amended by adding the following new subsection to read:

"(b1) Payments. – Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, amounts allowable for prescription drugs under Medicaid. For all other providers, effective no later than January 1, 2006, services provided to children enrolled in the Program shall be provided at rates equivalent to one hundred fifteen percent (115%) of Medicaid rates, less any co-payments assessed to enrollees under this Part. Effective July 1, 2006, services provided to these children shall be provided at rates equivalent to one hundred percent (100%) of Medicaid rates,

less any co-payments assessed to enrollees under this Part. Effective until rates equivalent to one hundred fifteen percent (115%) of Medicaid rates become effective, providers of services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any co-payments assessed to enrollees under this Part."

## **LONG-TERM PLAN FOR MEETING MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES NEEDS**

**SECTION 10.24.(a)** The Secretary of the Department of Health and Human Services shall, in consultation with interested advocacy groups and affected State and local agencies, develop a long-range plan for addressing the mental health, developmental disabilities, and substance abuse services needs of the State. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102 and shall address the following:

- (1) The services needed at the community level within each LME in order to ensure an adequate level of services to the average number of persons needing the services based on population projections.
- (2) The full continuum of services needed for each disability group within an LME, including:
  - a. Which services could be regional or multi-LME based;
  - b. What percent of the population each LME would expect to use State-level facilities; and
  - c. An inventory of existing services within each LME for each disability group, and the gaps that exist;
- (3) Projected growth in services for each disability group within each LME or region that can reasonably be managed over the ensuing five-year period; and
- (4) Projected start-up costs and the total funding needed in each year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to implement the long-range plan.

Funds shall not be transferred from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services.

**SECTION 10.24.(b)** The Department shall use not less than fifty percent (50%) of moneys in the Trust Fund established pursuant to G.S. 143-15D for the 2005-2006 fiscal year for nonrecurring start-up funds for community-based services, including funding for existing area program services to transition to the private sector or

to another public service agency. Moneys in the Trust Fund may be used to expand recurring community-based services only if sufficient recurring funds can be identified within the Department from funds currently budgeted for mental health, developmental disabilities, and substance abuse services, area mental health programs or county programs, or local government.

**SECTION 10.24.(c)** Not later than March 1, 2006, the Department of Health and Human Services shall report on the implementation of this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

### **COMPREHENSIVE TREATMENT SERVICES PROGRAM**

**SECTION 10.25.(a)** The Department of Health and Human Services shall continue the Comprehensive Treatment Services Program for children at risk for institutionalization or other out-of-home placement. The Program shall be implemented by the Department in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies. The purpose of the Program is to provide appropriate and medically necessary residential and nonresidential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds shall be targeted for non-Medicaid eligible children. Program funds may also be used to expand a system-of-care approach for services to children and their families statewide. The program shall include the following:

- (1) Behavioral health screening for all children at risk of institutionalization or other out-of-home placement.
- (2) Appropriate and medically necessary residential and nonresidential services for deaf children.
- (3) Appropriate and medically necessary residential and nonresidential treatment services, including placements for sexually aggressive youth.
- (4) Appropriate and medically necessary residential and nonresidential treatment services, including placements for youth needing substance abuse treatment services and children with serious emotional disturbances.
- (5) Multidisciplinary case management services, as needed.
- (6) A system of utilization review specific to the nature and design of the Program.
- (7) Mechanisms to ensure that children are not placed in department of social services custody for the purpose of obtaining mental health residential treatment services.
- (8) Mechanisms to maximize current State and local funds and to expand use of Medicaid funds to accomplish the intent of this Program.
- (9) Other appropriate components to accomplish the Program's purpose.
- (10) The Secretary of the Department of Health and Human Services may enter into contracts with residential service providers.

- (11) A system of identifying and tracking children placed outside of the family unit in group homes, therapeutic foster care home settings, and other out-of-home placements.

**SECTION 10.25.(b)** In order to ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these children:

- (1) Provide only those treatment services that are medically necessary.
- (2) Implement utilization review of services provided.
- (3) Adopt the following guiding principles for the provision of services:
  - a. Service delivery system must be outcome-oriented and evaluation-based.
  - b. Services should be delivered as close as possible to the child's home.
  - c. Services selected should be those that are most efficient in terms of cost and effectiveness.
  - d. Services should not be provided solely for the convenience of the provider or the client.
  - e. Families and consumers should be involved in decision making throughout treatment planning and delivery.
- (4) Implement all of the following cost-reduction strategies:
  - a. Preauthorization for all services except emergency services.
  - b. Levels of care to assist in the development of treatment plans.
  - c. Clinically appropriate services.

**SECTION 10.25.(c)** The Department shall collaborate with other affected State agencies such as the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and with local departments of social services, area mental health programs, and local education agencies to eliminate cost shifting and facilitate cost-sharing among these governmental agencies with respect to the treatment and placement services.

**SECTION 10.25.(d)** The Department shall not allocate funds appropriated for Program services until a Memorandum of Agreement has been executed between the Department of Health and Human Services, the Department of Public Instruction, and other affected State agencies. The Memorandum of Agreement shall address specifically the roles and responsibilities of the various departmental divisions and affected State agencies involved in the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. The Department shall not allocate funds appropriated in this act for the Program until the Memoranda of Agreement between local departments of social services, area mental health programs, local education agencies, and the Administrative Office of the Courts and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, are executed to effectuate the purpose of the Program. The Memoranda of Agreement shall

address issues pertinent to local implementation of the Program, including provision for the immediate availability of student records to a local school administrative unit receiving a child placed in a residential setting outside the child's home county.

**SECTION 10.25.(e)** Notwithstanding any other provision of law to the contrary, services under the Comprehensive Treatment Services Program are not an entitlement for non-Medicaid eligible children served by the Program.

**SECTION 10.25.(f)** Of the funds appropriated in this act for the Comprehensive Treatment Services Program, the Department of Health and Human Services shall establish a reserve of three percent (3%) to ensure availability of these funds to address specialized needs for children with unique or highly complex problems.

**SECTION 10.25.(g)** The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected agencies, shall report on the following Program information:

- (1) The number and other demographic information of children served.
- (2) The amount and source of funds expended to implement the Program.
- (3) Information regarding the number of children screened, specific placement of children, including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.
- (4) The average length of stay in residential treatment, transition, and return to home.
- (5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.
- (6) Recommendations on other areas of the Program that need to be improved.
- (7) Other information relevant to successful implementation of the Program.

**SECTION 10.25.(h)** It is the intent of the General Assembly to (i) improve the safety and well-being of North Carolina's children, youth, and families; (ii) support collaboration among State, regional, and local agencies that deliver services to children, youth, and families; (iii) make more effective use of existing federal, State, and local resources and programs for children, youth, and families; and (iv) streamline service delivery, fill service gaps, and eliminate duplication of services for children, youth, and families.

The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, the Administrative Office of the Courts, and other affected State agencies share responsibility and accountability to assure effective collaboration among State and local agencies to improve outcomes for children and their families leading to full participation in their communities and schools.

The General Assembly recognizes that services to children, youth, and families are most effective when they are child- and family-centered, strengths-based, community-based, use multidisciplinary approaches, use evidence-based practices when appropriate, and recognize and respect cultural differences. These practices can be successfully implemented only where there is significant and ongoing collaboration and coordination among multiple public agencies. The General Assembly also recognizes that while agencies are making significant progress towards implementing these practices, there is also a need to focus State-level policy in order to provide support, remove barriers, and more fully implement these goals.

There is established a children's services work group. It shall be located in the Department of Administration for budgetary and staffing purposes only. The Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court shall each designate at least one representative to serve on the work group from among the programs, divisions, or departments under that administrator's control that provide services to children and youth. Each administrator named in the preceding sentence shall also appoint to serve on the work group at least one parent of a child or youth who has or is at risk for behavioral, social, health, or safety problems or academic failure, at least one member of a local collaborative body, and at least one private sector service provider. The Chair of the State Board of Education and the Superintendent of Public Instruction may make joint appointments.

The work group shall meet at least monthly. The first meeting of the work group shall occur not less than 30 days after the effective date of this section. The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and the Administrative Office of the Courts shall, in this order and on a rotating basis, host the monthly meetings of the work group. The Department of Administration shall provide staff and clerical support to the work group. The work group shall:

- (1) Identify common outcome measures for child-serving agencies that can be used for monitoring the safety, health, and well-being of North Carolina's children, youth, and families, including preventative measures.
- (2) Identify strategies for funding flexibility between State and local agencies, including shared funding streams and the removal of financial and bureaucratic barriers.
- (3) Develop a common service terminology to be used across child-serving agencies that is appropriate and assists collaboration and coordination.
- (4) Make recommendations regarding the creation of a shared database to track population and program outcomes information while protecting individual confidentiality.
- (5) Develop mechanisms that would allow agencies to share information about individual children receiving multiple services. Any

recommendations must take into account confidentiality requirements, be voluntary on the part of the party receiving services, and be time-limited. The mechanisms may address intake, assessment, and release procedures.

- (6) Examine State and local training needs for implementing increased coordination and collaboration.
- (7) Study other issues the work group determines would improve coordination and collaboration between child-serving agencies.

A majority of the work group shall constitute a quorum for the transaction of business.

Members of the work group shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5 or G.S. 138-6 as appropriate.

Upon the approval of the Secretary of the Department of Health and Human Services, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court, the work group shall submit its findings and recommendations to the Coordination of Children's Services Study Commission created under Section 4 of this act. The work group shall submit an interim report no later than December 15, 2005, and a final report no later than April 15, 2006. The reports shall specify those recommendations that may be implemented without statutory changes and those that would require statutory authorization.

If the General Assembly has not adjourned by those dates, or if the membership of the Study Commission has not been appointed, the work group shall submit its reports to the Joint Legislative Education Oversight Committee, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

The work group shall expire upon the filing of the final report.

**SECTION 10.25.(i)** There is created the Coordination of Children's Services Study Commission ("Commission"). The Commission shall consist of 18 members appointed as follows:

- (1) Nine members appointed by the Speaker of the House of Representatives as follows:
  - a. Five members of the House of Representatives, of whom at least one shall also serve on the House of Representatives Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a House of Representatives Judiciary Committee; and

- b. Four members of the public, including a district court judge, a member of a local collaborative body, a private sector service provider, and a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure.
- (2) Nine members appointed by the President Pro Tempore of the Senate as follows:
- a. Five members of the Senate, of whom at least one shall also serve on the Senate Health and Human Services Appropriations Subcommittee, at least one shall also serve on the Joint Legislative Education Oversight Committee, at least one shall also serve on the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and at least one shall also serve on a Senate Judiciary Committee; and
  - b. Four members of the public, including a parent of a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a child who has or is at risk for behavioral, social, health, or safety problems or academic failure, a member of a local board of education, and a member of a board of county commissioners.

The Speaker of the House of Representatives shall appoint a cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

**SECTION 10.25.(j)** The purpose of the Commission is to study and recommend changes to improve collaboration and coordination among agencies that provide services to children, youth, and families with multiple service needs. The Commission's recommendations shall include mechanisms for establishing clear State leadership, consistent policy direction, and increased accountability at the State and local levels. As part of its work, the Commission shall:

- (1) Identify existing State, regional, and local collaborative bodies (including their charges, scopes of authority, and accountability requirements) that have been created by legislation, administrative rule, or agency policy and that are charged with serving, protecting, or improving the well-being of North Carolina's children, youth, and families. Once it has identified the collaborative bodies, the Commission shall consider how they could be consolidated, reorganized, or eliminated in order to improve their effectiveness and accountability, increase the likelihood that key players will actively participate, and reduce unnecessary duplication of effort. The Commission shall also consider the creation of a mechanism for coordination and communication among the State and local



collaborative bodies, incentives for collaboration, clarification of roles among agencies, and ways to monitor the extent to which groups are collaborating.

- (2) Study the practices of agencies currently implementing a system of care platform of practices and make recommendations regarding whether to adopt those practices statewide and across child-serving agencies as the preferred mechanism for providing services to children, youth, and families. In examining this issue, the Commission shall identify those State and local agencies that are currently implementing practices that are consistent with a system of care, those states that have implemented a system of care as a statewide policy initiative, and the extent to which a system of care is cost-effective.
- (3) The Commission shall also examine the following principles that are associated with a system of care and determine whether to recommend the adoption of a State policy that reflects these principles:
  - a. Services for children should promote success, safety, and permanence.
  - b. Services should be child- and family-centered, giving priority to keeping children with their families, in their home, school, and community.
  - c. Services should actively promote early identification and intervention.
  - d. Services should be designed to protect the rights of children.
  - e. Services shall be integrated and comprehensive, addressing the child's physical, educational, social, and emotional needs through a single child and family team.
  - f. Services shall be outcomes-accountable and tied to a unified child and family plan.
  - g. Agency resources and services shall be shared and coordinated.
  - h. Services shall be provided as close to home as appropriate in the least restrictive setting consistent with what is known to be effective.
  - i. Services shall be culturally competent.
  - j. Services shall address the unique strengths, needs, and potential of each child and family, and shall be sufficiently flexible to meet highly individualized child and family needs.
  - k. Management of the child-serving system is a responsibility shared among all public and private child-serving agencies that should be held collectively accountable for outcomes.
- (4) In reviewing principles relating to a system of care, the Commission shall determine whether they articulate goals that are measurable and if not, determine whether they could be modified to reflect measurable goals.

- (5) Receive and study the recommendations contained in the reports submitted by the work group created in Section 2 of this act and determine whether to recommend any of the statutory proposals.
- (6) Study any other issues the Commission determines would improve coordination and collaboration among child-serving agencies.

**SECTION 10.25.(k)** Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Professional staff shall be those assigned to subject areas or agencies involving child-serving programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and the Department of Public Instruction. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The members of the Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1, 138-5, or 138-6 as appropriate.

**SECTION 10.25.(m)** The Department shall report on April 1, 2006, and April 1, 2007, on the implementation of subsections (a) through (g) of this section. The Coordination of Children's Services Study Commission, established under this section, shall report annually on April 1. The reports required under this subsection shall be made to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

## **SERVICES TO MULTIPLY DIAGNOSED ADULTS**

**SECTION 10.26.(a)** In order to ensure that multiply diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse services system, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall do the following with respect to services provided to these adults:

- (1) Implement the following guiding principles for the provision of services:
  - a. Service delivery system must be outcome-oriented and evaluation-based.
  - b. Services should be delivered as close as possible to the consumer's home.

- c. Services selected should be those that are most efficient in terms of cost and effectiveness.
  - d. Services should not be provided solely for the convenience of the provider or the client.
  - e. Families and consumers should be involved in decision making throughout treatment planning and delivery.
- (2) Provide those treatment services that are medically necessary.
  - (3) Implement utilization review of services provided.

**SECTION 10.26.(b)** The Department of Health and Human Services shall implement all of the following cost-reduction strategies:

- (1) Preauthorization for all services except emergency services.
- (2) Criteria for determining medical necessity.
- (3) Clinically appropriate services.

**SECTION 10.26.(c)** No State funds shall be used for the purchase of single-family or other residential dwellings to house multiply diagnosed adults.

**SECTION 10.26.(d)** The Department shall report on implementation of this section on May 1, 2006, and again on May 1, 2007, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division.

**EXTEND MENTAL HEALTH CONSUMER ADVOCACY PROGRAM  
CONTINGENT UPON FUNDS APPROPRIATED BY THE 2007 GENERAL  
ASSEMBLY**

**SECTION 10.27.** Section 4 of S.L. 2001-437, as amended by Section 10.30 of S.L. 2002-126, and as further amended by Section 10.10 of S.L. 2003-284, reads as rewritten:

"**SECTION 4.** Sections 1.1 through 1.21(b) of this act become effective July 1, 2002. ~~Section 2 of this act becomes effective only if funds are appropriated by the 2005 General Assembly for that purpose.~~ Section 2 of this act becomes effective July 1 of the fiscal year for which funds are appropriated by the ~~2005~~ General Assembly for that purpose. The remainder of this act is effective when it becomes law."

**TRANSITION PLANNING FOR STATE PSYCHIATRIC HOSPITALS**

**SECTION 10.28.(a)** In keeping with the United States Supreme Court decision in Olmstead vs. L.C. & E.W. and State policy to provide appropriate services to clients in the least restrictive and most appropriate environment, the Department of Health and Human Services shall continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities, as appropriate. The goal is to develop mechanisms and identify resources needed to enable patients and their families to receive the necessary services and supports based on the following guiding principles:

- (1) Individuals shall be provided acute psychiatric care in non-State facilities when appropriate.
- (2) Individuals shall be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.
- (3) Individuals shall receive evidenced-based psychiatric services and care that are cost-efficient.
- (4) The State shall minimize cost shifting to other State and local facilities or institutions.

**SECTION 10.28.(b)** The Department of Health and Human Services shall conduct an analysis of the individual patient service needs and shall develop and implement an individual transition plan, as appropriate, for patients in each hospital. The State shall ensure that each individual transition plan, as appropriate, shall take into consideration the availability of appropriate alternative placements based on the needs of the patient and within resources available for the mental health, developmental disabilities, and substance abuse services system. In developing each plan, the Department shall consult with the patient and the patient's family or other legal representative.

**SECTION 10.28.(c)** In accordance with the plan established in subsections (a) and (b) of this section, any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. These funds shall be used to facilitate the transition of clients into appropriate community-based services and supports in accordance with G.S. 143-15.3D. Recurring savings realized through implementation of this section shall be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, (i) for implementation of subsections (a) and (b) of this section and (ii) to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W.

**SECTION 10.28.(d)** The Department of Health and Human Services shall submit reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division. These reports shall be submitted on December 1, 2005, and May 1, 2006.

## **MENTAL RETARDATION CENTER DOWNSIZING**

**SECTION 10.29.(a)** In accordance with the Department of Health and Human Services' plan for mental health, developmental disabilities, and substance abuse services system reform, the Department shall ensure that the downsizing of the State's regional mental retardation facilities is continuously based upon residents' needs and the availability of community-based services with a targeted goal of four percent (4%) each

year. The Department shall implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The Department shall manage the client population of the mental retardation centers in order to ensure that placements for ICF-MR level of care shall be made in non-State facilities. Admissions to State ICF-MR facilities are permitted only as a last resort and only upon approval of the Department. The corresponding budgets for each of the State mental retardation centers shall be reduced, and positions shall be eliminated as the census of each facility decreases. At no time shall mental retardation center positions be transferred to other units within a facility or assigned nondirect care activities such as outreach.

**SECTION 10.29.(b)** The Department of Health and Human Services shall apply any savings in State appropriations in each year of the 2005-2007 fiscal biennium that result from reductions in beds or services as follows:

- (1) The Department shall place nonrecurring savings in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs and use the savings to facilitate the transition of clients into appropriate community-based services and support in accordance with G.S. 143-15.3D;
- (2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall retain recurring savings realized through implementation of this section to support the recurring costs of additional community-based placements from Division facilities in accordance with Olmstead vs. L.C. & E.W. In determining the savings in this section, savings shall include all savings realized from the downsizing of the State mental retardation centers, including the savings in direct State appropriations in the budgets of the State mental retardation centers; and
- (3) The Department of Health and Human Services, Division of Medical Assistance, shall transfer any recurring Medicaid savings resulting from the downsizing of State-operated MR centers from the ICF-MR line in Medicaid to the CAP-MR/DD line.

**SECTION 10.29.(c)** Consistent with the requirements of this section, the Secretary of Health and Human Services shall develop a plan to ensure that there are sufficient developmental disability/mental retardation regional centers to correspond with service catchment areas. The Plan shall address:

- (1) Methods of funding for community services necessitated by down-sizing;
- (2) How many State-operated beds and non-State operated beds are needed to serve the population; and
- (3) Alternative uses for facilities.

Not later than April 1, 2006, the Department shall report on the development of the plan, and not later than April 1, 2007, shall report the final plan, including recommendations for legislative action, to the House of Representatives Appropriations

Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.29.(d)** The Department of Health and Human Services shall report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The Department shall submit the progress report no later than January 15, 2006, and submit a final report no later than May 1, 2006.

## **PRIVATE AGENCY UNIFORM COST-FINDING REQUIREMENT**

**SECTION 10.30.** G.S. 122C-147.2 reads as rewritten:

**"§ 122C-147.2. Purchase of services and reimbursement rates.**

(a) When funds are used to purchase services, the following provisions apply:

- (1) Reimbursement rates for specific types of service shall be negotiated between the Secretary and the area authority. The negotiation shall begin with the rate determined by ~~the a~~ standardized cost-finding and rate-setting procedure ~~that is required by G.S. 122C-143.2(a) or by another method~~ approved by the Secretary.
- (2) The reimbursement rate used for the payment of services shall incorporate operating and administrative costs, including costs for property in accordance with G.S. 122C-147.

(b) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with subsection (a) of this section. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding. If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office."

## **DHHS POLICIES AND PROCEDURES IN DELIVERING COMMUNITY MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES**

**SECTION 10.31.** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall in cooperation with area mental health authorities and county programs, identify and eliminate administrative and fiscal barriers created by existing State and local policies and procedures in the delivery of community-based mental health, developmental disabilities, and substance abuse services provided through the area programs and

county programs, including services provided through the Comprehensive Treatment Services Program for Children and services delivered to multiply diagnosed adults. The Department shall implement changes in policies and procedures in order to facilitate all of the following:

- (1) The provision of services to adults and children as defined in the Mental Health System Reform State Plan as priority or targeted populations.
- (2) A revised system of allocating State and federal funds to area mental health authorities and county programs that reflects projected needs, including the impact of system reform efforts rather than historical allocation practices and spending patterns.
- (3) The provision of services to children not deemed eligible for the Comprehensive Treatment Services Program for Children, but who would otherwise be in need of medically necessary treatment services to prevent out-of-home placement.
- (4) The provision of services in the community to adults remaining in and being placed in State institutions addressed in Olmstead v. L.C.

Area mental health, developmental disabilities, and substance abuse services authorities and county programs shall use all funds appropriated for and necessary to provide mental health, developmental disabilities, and substance abuse services to meet the need for these services. If excess funds are available after expending appropriated funds to fully meet service needs, one-half of these excess funds shall not revert to the General Fund but shall be transferred to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, except that one-half of the funds appropriated for the Comprehensive Treatment Services Program for Children that are unexpended and unencumbered shall not revert to the General Fund but shall be carried forward and used only for services for children and adolescents.

The Department, in consultation with the area mental health authorities and county programs, shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the progress in implementing these changes. The report shall be submitted on October 1, 2005, and February 1, 2006.

## **RULES PERTAINING TO CONFLICT OF INTEREST IN REFERRALS TO PROVIDER AGENCIES**

**SECTION 10.33.** G.S. 122C-26 reads as rewritten:

### **"§ 122C-26. Powers of the Commission.**

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend, and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;
- (4) Adopt rules for the waiver of rules adopted under this Article; and
- (5) Adopt rules applicable to facilities licensed under this Article:
  - a. Establishing personnel requirements of staff employed in facilities;
  - b. Establishing qualifications of facility administrators or directors;
  - c. Establishing requirements for death reporting including confidentiality provisions related to death reporting; ~~and~~
  - d. Establishing requirements for patient ~~advocates~~. advocates; and
  - e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety."

**LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO STUDY OVERSIGHT AND MONITORING BY DEPARTMENT OF HEALTH AND HUMAN SERVICES OF SERVICES TO MENTAL HEALTH CONSUMERS**

**SECTION 10.34.** The Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study the oversight and monitoring roles and activities of the Divisions of: Social Services, Facility Services, Medical Assistance, and Mental Health, Developmental Disabilities, and Substance Abuse Services, of the Department of Health and Human Services. The study shall focus on how the oversight and monitoring activities benefit consumers of mental health, developmental disabilities, and substance abuse services in residential settings, and shall include in its report recommendations on ensuring quality of care and increasing efficiency in the provision of services. The Oversight Committee shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2006.

**APPEALS PROCESS FOR CLIENTS OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES PROGRAMS**



**SECTION 10.35.(a)** G.S. 143B-147(a) is amended by adding the following new subdivision to read:

"(9) To adopt rules establishing a process for non-Medicaid eligible clients to appeal to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services decisions made by an area authority or county program affecting the client. The purpose of the appeal process is to ensure that mental health, developmental disabilities, and substance abuse services are delivered within available resources, to provide an additional level of review independent of the area authority or county program to ensure appropriate application of and compliance with applicable statutes and rules, and to provide additional opportunities for the area authority or county program to resolve the underlying complaint. Upon receipt of a written request by the non-Medicaid eligible client, the Division shall review the decision of the area authority or county program and shall advise the requesting client and the area authority or county program as to the Division's findings and the bases therefor. Notwithstanding Chapter 150B of the General Statutes, the Division's findings are not a final agency decision for purposes of that Chapter. Upon receipt of the Division's findings, the area authority or county program shall issue a final decision based on those findings. Nothing in this subdivision shall be construed to create an entitlement to mental health, developmental disabilities, and substance abuse services."

**SECTION 10.35.(b)** The Commission shall commence the rule-making process in a timely manner to ensure, insofar as possible given the time constraints of Chapter 150B of the General Statutes, that the rules become effective not later than July 1, 2006.

## **DHHS STUDY OF ACCREDITATION OF RESIDENTIAL TREATMENT FACILITIES**

**SECTION 10.35A.(a)** The Department of Health and Human Services shall study the feasibility of establishing accreditation requirements for residential treatment facilities. In conducting the study, the Department shall identify accreditation organizations and a review of their standards and shall consider the following:

- (1) The financial and other impact accreditation will have on the facilities affected.
- (2) The feasibility of developing an alternative to accreditation for small facilities.
- (3) The potential for a reduction in the number of visits required by a local management entity if a residential facility were accredited.
- (4) Review of accreditation requirements of other states.
- (5) Cost of accreditation to the State and affected providers.
- (6) The specific requirements to meet accreditation.

**SECTION 10.35A.(b)** The Department of Health and Human Services shall report its findings and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

## **APPROVAL OF RULES GOVERNING RESIDENTIAL TREATMENT FOR CHILDREN OR ADOLESCENTS**

**SECTION 10.35B.** Notwithstanding G.S. 150B-21.1(b) and G.S. 150B-21.3(b2), the Department of Health and Human Services may adopt as temporary rules the rules governing residential treatment for children or adolescents approved for adoption or revision on May 18, 2005, by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and approved by the Rules Review Commission. The temporary rules shall become effective as provided in G.S. 150B-21.3(a).

## **CONTROLLED SUBSTANCES REPORTING**

**SECTION 10.36.(a)** Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5D.

"North Carolina Controlled Substances Reporting System Act.

**"§ 90-113.60. Short title.**

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act."

**"§ 90-113.61. Legislative findings and purpose.**

(a) The General Assembly makes the following findings:

- (1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.
- (2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.
- (3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.
- (4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.
- (5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
- (6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.
- (7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.

- (8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.
- (9) Review of data from controlled substances reporting systems help:
  - a. Support the legitimate medical use of controlled substances.
  - b. Identify and prevent diversion of prescribed controlled substances.
  - c. Reduce morbidity and mortality from unintentional drug overdoses.
  - d. Reduce the costs associated with the misuse and abuse of controlled substances.
  - e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.
  - f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
  - g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

**"§ 90-113.62. Definitions.**

The following definitions apply in this Article:

- (1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).
- (3) "Department" means the Department of Health and Human Services.
- (4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:
  - a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.
  - b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.
  - c. A wholesale distributor of a Schedule II through V controlled substance.
- (5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household.

**"§ 90-113.63. Requirements for controlled substances reporting system.**

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section on a monthly basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly thereafter.

(b) The Commission for Health Services shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

- (1) The dispenser's DEA number.
- (2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
  - a. Full address, including city, state, and zip code,
  - b. Telephone number, and
  - c. Date of birth.
- (3) The date the prescription was written.
- (4) The date the prescription was filled.
- (5) The prescription number.
- (6) Whether the prescription is new or a refill.
- (7) Metric quantity of the dispensed drug.
- (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- (9) National Drug Code of dispensed drug.
- (10) Prescriber's DEA number.

**"§ 90-113.64. Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.

- (2) An individual who requests the individual's own controlled substances reporting system information.
- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.
- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a court pursuant to a lawful court order in a criminal action.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

**"§ 90-113.65. Civil penalties; other remedies; immunity from liability.**

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this section or a rule adopted pursuant to this section shall be assessed a civil penalty not to exceed five thousand dollars (\$5,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this section may bring an action against any person or entity who has intentionally, knowingly, or negligently

released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars (\$1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data.

**"§ 90-113.66. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.**

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this Article."

**SECTION 10.36.(b)** G.S. 132-1.1 is amended by adding the following new subsection to read:

"(e) Controlled Substances Reporting System Information. – Information compiled or maintained in the Controlled Substances Reporting System established under Article 5D of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132-1 and may be released only as provided under Article 5D of Chapter 90 of the General Statutes."

**SECTION 10.36.(c)** This section becomes effective January 1, 2006.

Appropriations Subcommittee on Health and Human Services

## **SENIOR CENTER OUTREACH**

**SECTION 10.37.(a)** Funds appropriated to the Department of Health and Human Services, Division of Aging and Adult Services, for the 2005-2007 fiscal biennium, shall be used by the Division of Aging and Adult Services to enhance senior center programs as follows:

(1) To expand the outreach capacity of senior centers to reach unserved or underserved areas; or

(2) To provide start-up funds for new senior centers.

All of these funds shall be allocated by October 1 of each fiscal year.

**SECTION 10.37.(b)** Prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:

(1) Formally endorse the need for such a center;

(2) Formally agree on the sponsoring agency for the center; and

(3) Make a formal commitment to use local funds to support the ongoing operation of the center.

**SECTION 10.37.(c)** State funding shall not exceed seventy-five percent (75%) of reimbursable costs.

## **STATE-COUNTY SPECIAL ASSISTANCE**

**SECTION 10.38.(a)** The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars (\$1,231) per month per resident.

**SECTION 10.38.(b)** Effective October 1, 2005, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighteen dollars (\$1,118) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

**SECTION 10.38.(c)** Effective October 1, 2005, the maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars (\$1,515) per month per resident unless adjusted by the Department in accordance with subsection (e) of this section.

**SECTION 10.38.(d)** It is the intent of the General Assembly to protect individuals who meet current eligibility standards for State-County Special Assistance from becoming disenfranchised from the program as a result of any changes proposed in this section. Therefore, subject to any necessary approvals by the Center for Medicare & Medicaid Services (CMS), the eligibility of Special Assistance recipients who resided in adult care homes on September 30, 2003, and remain continuously eligible shall not be affected by an income reduction in the Special Assistance eligibility criteria, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand ninety-one dollars (\$1,091) per month per resident.

**SECTION 10.38.(e)** Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Service (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The

amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

### **SPECIAL ASSISTANCE IN-HOME**

**SECTION 10.39.(a)** The Department of Health and Human Services may use funds from the existing State-County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals in in-home living arrangements. These payments may be made for up to 1,000 individuals during the 2005-2006 fiscal year and the 2006-2007 fiscal year. The standard monthly payment to individuals enrolled in the Special Assistance in-home program shall be seventy-five percent (75%) of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager. For State fiscal year 2005-2006, qualified individuals shall not receive payments at rates less than they would have been eligible to receive in State fiscal year 2004-2005. The Department shall implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility. The Department's policies and procedures shall include the use of a functional assessment. The Department shall make this in-home option available to all counties on a voluntary basis. To the maximum extent possible, the Department shall consider geographic balance in the dispersion of payments to individuals across the State.

**SECTION 10.39.(b)** The Department shall report on or before January 1, 2006, and on or before January 1, 2007, to the cochairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the cochairs of the Senate Appropriations Committee, and the cochairs of the Senate Appropriations Committee on Health and Human Services. This report shall include the following information:

- (1) A description of cost savings that result from allowing individuals eligible for State-County Special Assistance the option of remaining in the home.
- (2) A complete fiscal analysis of the in-home option to include all federal, State, and local funds expended.
- (3) How much case management is needed and which types of individuals are most in need of case management.



- (4) The geographic location of individuals receiving payments under this section.
- (5) A description of the services purchased with these payments.
- (6) A description of the income levels of individuals who receive payments under this section and the impact on the Medicaid program.
- (7) Findings and recommendations as to the feasibility of continuing or expanding the in-home program.
- (8) The level and quantity of services (including personal care services) provided to the demonstration project participants compared to the level and quantity of services for residents in adult care homes.

**SECTION 10.39.(c)** The Department shall incorporate data collection tools designed to compare quality of life among institutionalized versus noninstitutionalized populations (i.e., an individual's perception of his or her own health and well-being, years of healthy life, and activity limitations). To the extent national standards are available, the Department shall utilize those standards.

## **LICENSURE OF RESIDENTIAL TREATMENT FACILITIES**

**SECTION 10.40.(a)** Article 2 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

**"§ 122C-23.1. Licensure of residential treatment facilities.**

The General Assembly finds:

- (1) That much of the care for residential treatment facility residents is paid by the State and the counties;
- (2) That the cost to the State for care for residents of residential treatment facilities is substantial, and high vacancy rates in residential treatment facilities further increase the cost of care;
- (3) That the proliferation of residential treatment facilities results in costly duplication and underuse of facilities and may result in lower quality service;
- (4) There is currently no ongoing relationship between some applicants for licensure and local management entities (LMEs) that are responsible for the placement of children and adults in residential treatment facilities; and
- (5) That it is necessary to protect the general welfare and lives, health, and property of the people of the State for the local management entity (LME) to verify that additional beds are needed in the LME's catchment area before new residential treatment facilities are licensed. This process is established to ensure that unnecessary costs to the State do not result, residential treatment facility beds are available where needed, and that individuals who need care in residential treatment facilities may have access to quality care.

Based on these findings, the Department of Health and Human Services may license new residential treatment facilities if the applicant for licensure submits with the application a letter of support obtained from the local management entity in whose

catchment area the facility will be located. The letter of support shall be submitted to the Department of Health and Human Services, Division of Facility Services and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the same type of facility in the catchment area and the projected need for additional beds of the same type of facility. As used in this subsection, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes.

**SECTION 10.40.(b)** This section applies to license applications pending and license applications submitted on and after the effective date of this act.

**REGULATORY CHANGES TO IMPROVE QUALITY AND SAFETY IN HOME CARE SERVICES, MENTAL HEALTH FACILITIES, ADULT CARE HOMES, AND CERTAIN HOSPITAL FACILITIES**

**SECTION 10.40A.(a)** G.S. 131E-140 reads as rewritten:

**"§ 131E-140. Rules and enforcement.**

(a) The Commission ~~is authorized to~~ may adopt, amend and repeal all rules necessary for the implementation of this ~~Part.~~ Part and Part 3A of Article 6 of this Chapter. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider. Rules authorized under this section include rules:

~~(a1) The Commission shall adopt rules that~~

- (1) That recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care service.
- (2) To establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the North Carolina General Statutes provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.
- (3) For the purpose of ensuring effective supervision of in-home aide staff and timely provision of services, the Commission shall adopt rules defining geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies.
- (4) Prohibiting licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

(5) Requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care ~~agencies~~-agencies and shall conduct an inspection of each agency at least every three years."

**SECTION 10.40A.(b)** G.S. 131E-141 reads as rewritten:

**"§ 131E-141. Inspection.**

(a) The Department shall inspect home care agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews, except as noted in G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, " 'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency that the client has the right to object in writing to release of information or review of the client's records and that by an objection in writing the client may prohibit the inspection or release of the records.

(c) An agency must provide each client with a written notice of the Division of Facility Services hotline number in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services."

**SECTION 10.40A.(c)** G.S. 122C-21 reads as rewritten:

**"§ 122C-21. Purpose.**

The purpose of this Article is to provide for licensure of facilities for the mentally ill, developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

- (1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and
- (2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. The Department shall ensure that licensable facilities are inspected every two years to determine compliance with physical plant and life-safety requirements."

**SECTION 10.40A.(d)** G.S. 122C-23(e) reads as rewritten:

~~"(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue.~~ Initial licenses issued under the authority of this section shall be valid for not more than 15 months. Licenses shall be renewed annually thereafter and shall expire at the end of the calendar year. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary. Licenses for facilities that have not served any clients during the previous 12 months are not eligible for renewal.

The Secretary may issue a provisional license for a period up to six months to a person obtaining the initial license for a facility. The licensee must demonstrate substantial compliance prior to being issued a full license.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule ~~or rules~~ when the noncompliance does not present an immediate threat to the health and safety of the individuals in the licensable facility. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. ~~The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility.~~ A provisional license for an additional period of time to meet the noncompliance may not be issued."

**SECTION 10.40A.(e)** G.S. 122C-24.1(a) reads as rewritten:

**"§ 122C-24.1. Penalties; remedies.**

(a) **Violations Classified.** – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious

physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

- a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
- b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
- c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) for each Type A Violation in facilities or programs that serve ~~nine-six~~ or fewer persons. The Department shall impose a civil penalty in an amount not less than ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) nor more than ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000) for each Type A Violation in facilities or programs that serve ~~10-seven~~ or more persons.

- (2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation."

**SECTION 10.40A.(f)** G.S. 122C-24.1(b) reads as rewritten:

"(b) Penalties for Failure to Correct Violations Within Time Specified. –

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.
- (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred

dollars (\$400.00) for each day that the deficiency continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) of this section when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months."

**SECTION 10.40A.(g)** G.S. 122C-25(a) reads as rewritten:

**"§ 122C-25. Inspections; confidentiality.**

(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e. shall be inspected on an annual basis.

...."

**SECTION 10.40A.(h)** G.S. 122C-25 is amended by adding the following new subsection to read:

**"§ 122C-25. Inspections; confidentiality.**

...

(d) All residential facilities, as defined in G.S. 122C-3(14)e., shall ensure that the Division of Facility Services complaint hotline number is posted conspicuously in a public place in the facility."

**SECTION 10.40A.(i)** G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. –

- (1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted pursuant thereto, the Department shall issue a license for the balance of the calendar year. Licenses issued-renewed under the authority of this section shall be valid for one year from the date of issuance-renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of one hundred twenty-five dollars (\$125.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee

in the amount of one hundred seventy-five dollars (\$175.00) plus a nonrefundable annual per-bed fee of six dollars and twenty-five cents (\$6.25). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
- b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

- a. The Department finds that:
  1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
  2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- b. The Department finds that:
  1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
  2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

- c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

**SECTION 10.40A.(j)** G.S. 131D-2(b)(1a) reads as rewritten:

"(1a) ~~In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow up inspection called for. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. The Department shall also keep an up to date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section. The Department shall keep an up to date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section. In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection:~~

- a. The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. The Division of Facility Services shall inspect all adult care homes and adult care units in nursing homes on an annual basis, effective July 1, 2007, and thereafter. In addition, the Department shall ensure that adult care homes are inspected every two years to



determine compliance with physical plant and life-safety requirements.

b. The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Facility Services and to have the Division of Facility Services oversee this monitoring and perform any required follow-up inspection. The county departments of social services shall document in a written report all on-site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Facility Services written reports of each facility visit within 20 working days of the visit.

c. The Division of Facility Services shall conduct and document annual reviews of the county departments of social services' performance. When monitoring is not done timely or there is failure to identify or document noncompliance, the Department may intervene in the particular service in question. Department intervention shall include one or more of the following activities:

1. Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.
2. Advising county personnel as to appropriate policies and procedures.
3. Establishing a plan of action to correct county performance.

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes.

d. The county departments of social services' adult home specialists and their supervisors shall complete:

1. Eight hours of prebasic training within 60 days of employment;
2. Thirty-two hours of basic training within six months of employment;
3. Twenty-four hours of postbasic training within six months of the basic training program;
4. A minimum of eight hours of complaint investigation training within six months of employment; and
5. A minimum of 16 hours of statewide training annually by the Division of Facility Services.

- e. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit.
- f. The Department shall keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section."

**SECTION 10.40A.(k)** G.S. 131D-2 is amended by adding the following new subsection to read:

"(j) Adult care homes shall post the Division of Facility Services' complaint hotline number conspicuously in a public place in the facility."

**SECTION 10.40A.(l)** G.S. 131D-34 reads as rewritten:

**"§ 131D-34. Penalties; remedies.**

(a) **Violations Classified.** – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

(1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, or results in substantial risk that death or serious physical harm will occur. Type A Violations shall be abated or eliminated immediately. The Department shall require an immediate plan of correction for each Type A Violation. The person making the findings shall do the following:

- a. Orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
- b. Within 10 working days of the investigation, confirm in writing to the administrator the information provided orally under sub-subdivision a. of this subdivision; and
- c. Provide a copy of the written confirmation required under sub-subdivision b. of this subdivision to the Department.

The Department shall impose a civil penalty in an amount not less than ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor more than ~~five thousand dollars (\$5000)~~ ten thousand dollars (\$10,000) for each Type A Violation in homes licensed for ~~nine-six~~ or fewer beds. The Department shall impose a civil penalty in an amount not less than ~~five hundred dollars (\$500.00)~~ one thousand dollars

(\$1,000) nor more than ten thousand dollars (\$10,000) twenty thousand dollars (\$20,000) for each Type A Violation in facilities licensed for ~~10~~ seven or more beds.

- (2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm will occur. The Department shall require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a ~~specific~~ reasonable time period to address the violation. The required plan cannot exceed requirements imposed by existing rule or law.

(b) Penalties for failure to correct violations within time specified.

- (1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for each day that the deficiency continues beyond the time specified in the plan of correction approved by the Department or its authorized representative. The Department or its authorized representative shall ensure that the violation has been corrected.
- (2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred dollars (\$400.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.
- (3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) of subsection (a) when a facility under the same management, ownership, or control has received a citation and paid a penalty for violating the same specific provision of a statute or regulation for which it received a citation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the fact that death or serious physical harm to a resident has resulted; the severity of the actual or

potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

- (1a) The gravity of the violation, including the probability that death or serious physical harm to a resident will result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (1b) The gravity of the violation, including the probability that death or serious physical harm to a resident may result; the severity of the potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 and other applicable State and federal laws and regulations;
- (2a) Efforts by the licensee to correct violations;
- (3) The number and type of previous violations committed by the licensee within the past 36 months;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

- (1) The penalty review committee;
- (2) The local department of social services who is responsible for oversight of the facility involved;
- (3) The licensee involved;
- (4) The residents affected; and
- (5) The family members or guardians of the residents affected.

(c2) Local county departments of social services and Division of Facilities Services personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(d1) The Department shall impose a civil penalty on any applicant for licensure who provides false information or omits information on the portion of the licensure application requesting information on owners, administrators, principals, or affiliates of the facility. The amount of the penalty shall be as is prescribed for a Type A Violation.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if:

- (1) The cost of training does not exceed one thousand dollars (\$1,000);
- (2) The penalty would be for the facility's only violation within a 12-month period preceding the current violation and while the facility is under the same management; and
- (3) The training is:
  - a. Specific to the violation;
  - b. Approved by the Department of Health and Human Services; and
  - c. Taught by someone approved by the Department and other than the provider.

(h) The Secretary shall establish a penalty review committee within the Department, which shall meet at least semiannually to review violations and penalties imposed by the Adult Care Licensure Section; provide a forum for residents, guardians or families of residents, local department of social services, and providers; and make recommendations to the Department for changes in policy, training, or rules as a result of its review and publish a report.~~review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129 as follows:~~

- (1) The Secretary ~~shall:~~ shall administer the work of the Committee and provide notice of its meetings to the following parties involved in the penalties the Committee will be reviewing:
  - a. The licensed provider; Administer the work of the committee;
  - b. The local department of social services that is responsible for oversight of the facility involved; Ensure provision of departmental staff review;

- c. ~~The residents affected; and Evaluate the local departments of social services and the Division of Facility Services' penalty recommendations;~~
  - d. ~~The families or guardians of the residents affected. Ensure that recommendations by the Department are complete and submitted within 60 days of receipt of the initial recommendations from the local departments of social services or the Division of Facility Services; and~~
  - e. ~~Provide written copies of all procedures to:~~
    - 1. ~~The penalty review committee;~~
    - 2. ~~The local department of social services who is responsible for oversight of the facility involved;~~
    - 3. ~~The licensee involved;~~
    - 4. ~~The residents affected; and~~
    - 5. ~~The families or guardians of the residents affected.~~
- (2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:
- a. A licensed pharmacist;
  - b. A registered nurse experienced in long term care;
  - c. A representative of a nursing home;
  - d. A representative of an adult care home; and
  - e. Two public members. One shall be a "near" relative of a nursing home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. One shall be a "near" relative of a rest home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.
- (3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.
- (4) ~~Prior to serving on the committee, each member shall complete a training program provided by the Department of Health and Human Services that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.~~
- (4a) The Department of Health and Human Services shall notify families or guardians of affected residents of the right to request a penalty review committee review of the Department's penalty decision before the

decision becomes final. Within 60 days of receipt of a request from a family member or guardian for review of the Department's penalty decision, the penalty review committee shall meet to conduct the review and shall inform the family member or guardian of the results of the review.

(5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee.

(6) The Committee shall be cochaired by:

a. One member of the Department outside of the Division of Facility Services; and

b. One member who is not affiliated with the Department.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

**SECTION 10.40A.(m)** G.S. 131E-136 reads as rewritten:

**"§ 131E-136. Definitions.**

As used in this Part, unless otherwise specified:

(1) "Commission" means the North Carolina Medical Care Commission.

(1a) "Geographic service area" means the geographic area in which a licensed agency provides home care services.

(2) "Home care agency" means a private or public organization that provides home care services.

(2a) "Home care agency director" means the person having administrative responsibility for the operation of the licensed agency site.

(2b) "Home care client" means an individual who receives home care services.

(3) "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;

b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;

c. Medical social services;

d. In-home aide services that involve hands-on care to an individual;

e. Infusion nursing services; and

f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

- (4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E."

**SECTION 10.40A.(n)** Article 6 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 3A. Home Care Clients' Bill of Rights.

**"§ 131E-144.1. Legislative intent.**

It is the intent of the General Assembly to support an individual's desire to live at home and receive home care services.

**"§ 131E-144.2. Definitions.**

Unless otherwise specified, the definitions that are provided in Part 3 of Article 6 of this Chapter apply in this Part.

**"§ 131E-144.3. Declaration of home care clients' rights.**

Each client of a home care agency shall have the following rights:

- (1) To be informed and participate in his or her plan of care.
- (2) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.



- (3) To receive care and services that are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
- (4) To voice grievances about care and not be subjected to discrimination or reprisal for doing so.
- (5) To have his or her personal and medical records kept confidential and not be disclosed without appropriate written consent.
- (6) To be free of mental and physical abuse, neglect, and exploitation.
- (7) To receive a written statement of services provided by the agency and the charges the client is liable for paying.
- (8) To be informed of the process for acceptance and continuance of service and eligibility determination.
- (9) To accept or refuse services.
- (10) To be informed of the agency's on-call service.
- (11) To be informed of supervisory accessibility and availability.
- (12) To be advised of the agency's procedures for discharge.
- (13) To receive a reasonable response to his or her requests of the agency.
- (14) To be notified within 10 days when the agency's license has been revoked, suspended, canceled, annulled, withdrawn, recalled, or amended.
- (15) To be advised of the agency's policies regarding patient responsibilities.

**"§ 131E-144.4. Notice to client.**

(a) During the agency's initial evaluation visit or before furnishing services, a home care agency shall provide each client with the following:

- (1) A copy of the declaration of home care clients' rights.
- (2) A copy of the agency's policies regarding client responsibilities as it relates to safety and care plan compliance.
- (3) The address and telephone number for information, questions, or complaints about services provided by the agency.
- (4) The address and telephone number of the section of the Department of Health and Human Services responsible for the enforcement of the provisions of this Part.

(b) Receipts for the declaration of home care clients' rights and contact information required in this section shall be signed by the client and shall be retained in the agency's files.

**"§ 131E-144.5. Implementation.**

Responsibility for implementing the provisions of this Part shall rest with the home care agency director. Each agency shall provide appropriate training to implement this Part.

**"§ 131E-144.6. Enforcement and investigation.**

(a) The Department of Health and Human Services shall be responsible for enforcing the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable period of time, not to exceed 60 days.

(a1) When the Department of Health and Human Services receives a complaint alleging a violation of the provisions of this Part pertaining to client care or client safety, the Department shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a client as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a client as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory and reporting requirements for health care personnel pursuant to Article 15 of this Chapter, or for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

(b) A home care agency shall investigate, within 72 hours, complaints made to the agency by a home care client or the client's family and must document both the existence of the complaint and the resolution of the complaint.

**"§ 131E-144.7. Confidentiality.**

(a) The Department of Health and Human Services may inspect home care clients' medical records maintained at the agency when necessary to investigate any alleged violation of this Part.

(b) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. A person who has filed a complaint shall have access to information about a complaint investigation involving a specific home care client if written authorization is obtained from the client or legal representative."

**SECTION 10.40A.(o)** G.S. 131E-140 is amended by adding the following new subsection to read:

"(a1) The Commission shall adopt rules defining the scope of permissible advertising and promotional practice by home care agencies."

**SECTION 10.40A.(p)** The Department's Division of Aging and Adult Services shall develop a Quality Improvement Consultation Program for Adult Care Homes. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. The county departments of social services shall be responsible for implementation of the Program with all adult care homes located in the respective county, based on a timetable for statewide implementation.

The Division of Aging and Adult Services shall consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders and parties in the development of the Quality Improvement Consultation Program for Adult Care Homes.

The Department shall submit a progress report to the North Carolina Study Commission on Aging and to the Senate Appropriations Committee on Health and

Human Services and to the House of Representatives Subcommittee on Health and Human Services on or before April 1, 2006.

The report will address the following topics:

- (1) Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents;
- (2) Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes;
- (3) Dissemination of best practice models that have been used successfully elsewhere;
- (4) A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators;
- (5) Utilization of quality improvement plans for adult care homes that identify and resolve issues that adversely affect quality of care and services to residents. The plans include agreed upon time frames for completion of improvements and identification of needed resources;
- (6) Training required to equip county departments of social services' staff to implement the Program;
- (7) A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and
- (8) Identification of staffing and other resources needed to implement the Program.

The Division of Aging and Adult Services shall conduct a pilot of the Quality Improvement Consultation Program for Adult Care Homes. No more than four county departments of social services shall participate in the pilot. The Division of Aging and Adult Services shall consider geographic balance and size in carrying out the pilot. At the conclusion of the pilot, the Division of Aging and Adult Services shall make recommendations regarding the effectiveness of the Quality Improvement Consultation Program for Adult Care Homes. If the Division recommends expansion of the pilot to other counties or statewide implementation of the Program, its report shall include the cost and a proposed timetable for implementing these recommendations, including the identification of any necessary statutory and administrative rule changes. The recommendations shall be made to the Secretary of the Department of Health and Human Services, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services.

**SECTION 10.40A.(q)** The Department of Health and Human Services shall study whether there are any additional "health care facilities" and "health care personnel" that are employed in health care settings, including unlicensed health care settings, that should be contained in the Health Care Personnel Registry and listed in G.S. 131E-256. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging by December 1, 2005.

**SECTION 10.40A.(r)** G.S. 122C-25 and G.S. 131D-2(b)(1), as amended in subsections (g), (h), and (i) of this section, become effective July 1, 2007, except that the Division may conduct inspections more frequently than annually prior to July 1, 2007, as funds and personnel permit. G.S. 131D-2(b)(1a)d., as enacted by subsection (j) of this section, becomes effective July 1, 2006. Adult home specialists and their supervisors employed on or before July 1, 2006, must complete the required training components or those portions of the training components they have not completed prior to the effective date within 12 months. The remainder of this section is effective when this act becomes law.

#### **AUTHORIZATION FOR HEALTH CARE FACILITIES TO REMAIN IN OPERATION UNDER CERTAIN CIRCUMSTANCES**

**SECTION 10.40B.(a)** Notwithstanding provisions to the contrary in Chapter 150B and Article 9 of Chapter 131E of the General Statutes, a licensed health care facility in operation on July 1, 2005, under a certificate of need issued by the Department of Health and Human Services prior to that date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need.

**SECTION 10.40B.(b)** This section expires 30 days from the date of the Department's decision on the new certificate of need or adjournment sine die of the 2005 General Assembly, whichever occurs later.

#### **USE OF MEDICATION AIDES TO PERFORM TECHNICAL ASPECTS OF MEDICATION ADMINISTRATION IN SKILLED NURSING FACILITIES**

**SECTION 10.40C.(a)** Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

**"§ 131E-114.2. Use of medication aides to perform technical aspects of medication administration.**

**(a) Facilities licensed and medication administration services provided under this Part may utilize medication aides to perform the technical aspects of medication administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.**

**(1) A medication aide who is employed in a facility licensed under Article 5, Article 6, Part 1, and Article 10 of this Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry in addition to being listed on the Medication Aide Registry.**

**(2) Medication administration as used in Article 5, Article 6, Part 1, and Article 10 of this Chapter shall not include intravenous or injectable medication services.**

**(b) The Commission shall adopt rules to implement this section. Rules adopted by the Commission shall include:**

- (1) Training and competency evaluation of medication aides as provided for under this section.
- (2) Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.
- (3) Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with this Part."

**SECTION 10.40C.(b)** Article 9C of Chapter 90 of the General Statutes is amended by adding the following new section to read:

**"§ 90-171.56. Medication aide requirements.**

The Board of Nursing shall do the following:

- (1) Establish standards for faculty requirements for medication aide training; and
- (2) Provide ongoing review and evaluation, and recommend changes, for faculty and medication aide training requirements to support safe medication administration and improve client, resident, and patient outcomes."

**SECTION 10.40C.(c)** Article 16 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

**"§ 131E-270. Medication Aide Registry.**

(a) The Department shall establish and maintain a Medication Aide Registry containing the names of all health care personnel in North Carolina who have successfully completed a medication aide training program that has been approved by the North Carolina Board of Nursing and passed a State-administered medication aide competency exam.

(b) Before allowing an individual to serve as a medication aide, an employer shall access the Medication Aide Registry to verify that the individual is listed on the Registry and shall note each incidence of access in the appropriate business file. Employers may not use an individual as a medication aide unless the individual is listed on the Medication Aide Registry.

(c) Employers shall access the Health Care Personnel Registry prior to employing a medication aide. Any substantiated action as defined in G.S. 131E-256(a)(1) listed against the medication aide shall disqualify the medication aide from employment in any facility or agency covered by Part 1 of Article 6 of this Chapter."

**SECTION 10.40C.(d)** This section becomes effective July 1, 2006. The North Carolina Board of Nursing and the Department of Health and Human Services shall report on the implementation of this act to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006, and annually thereafter.

**DHHS AND COMMUNITY COLLEGES STUDY USE OF MEDICATION AIDES TO PERFORM TECHNICAL ASPECTS OF MEDICATION ADMINISTRATION**

**SECTION 10.40D.(a)** The Secretary of Health and Human Services and the President of the Community Colleges System shall jointly convene a study group to review and consider the use of medication aides to perform the technical aspects of medication administration. The study group shall consist of members representing at least the following entities and licensed health care facilities and providers:

- (1) Appointed by the Secretary of Health and Human Services:
  - a. Adult care homes.
  - b. Home care agencies.
  - c. Ambulatory surgical centers.
  - d. Hospitals.
  - e. Facilities providing mental health, developmental disabilities, and substance abuse services.
  - f. Nursing homes.
  - g. The nursing profession, as recommended by the Board of Nursing.
- (2) Community colleges appointed by the President of the Community Colleges System.
- (3) The Secretary of the Department of Correction.
- (4) Others as may be appointed by the Secretary of Health and Human Services or the President of the Community Colleges System.

**SECTION 10.40D.(b)** The study group shall address at least the following in its study and its recommendations regarding medication aide performance of the technical aspects of medication administration:

- (1) Training and competency evaluation of medication aides;
- (2) Training standards;
- (3) Ongoing review and evaluation of medication aide training; and
- (4) Requirements for supervision of medication aides.

**SECTION 10.40D.(c)** The Secretary of Health and Human Services and the President of the Community Colleges System shall report the progress and recommendations of the study group to the 2006 Regular Session of the 2005 General Assembly upon its convening, and the 2007 General Assembly upon its convening. Recommendations to the 2006 Regular Session of the 2005 General Assembly may include proposed legislation. A copy of the report shall be provided to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division at the same time as the report is submitted to the General Assembly.

**SECTION 10.40D.(d)** The Department of Health and Human Services shall continue its pilot program on the use of medication aides and shall report on the status of the pilot programs at the same time and to the same persons as the study group report to the General Assembly.

**SECTION 10.40D.(f)** G.S. 115C-47 is amended by adding the following new subdivision to read:

**"§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- ...
- (46) At the discretion of the board, to adopt policies and procedures authorizing schools that operate programs under G.S. 115C-307(c) to utilize unlicensed health care personnel to perform the technical aspects of medication administration to students. If adopted, the policies and procedures shall be consistent with the requirements of Article 9A of Chapter 90 of the General Statutes and shall include the following:
- a. Training and competency evaluation of medication aides as provided for under G.S. 131E-270.
  - b. Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-271.
  - c. Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with Articles 5, 6, 10, and 16 of Chapter 131E of the General Statutes."

**PLAN FOR STAR-RATING SYSTEM FOR ADULT CARE HOMES**

**SECTION 10.41.** The Department of Health and Human Services shall develop a plan for implementing a star-rating system for adult care homes to improve quality of care. The Department shall report on the status and details of the plan, including a recommended time line for implementation, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than January 1, 2007.

**SOCIAL SERVICES COMMISSION TECHNICAL CORRECTION**

**SECTION 10.42.** G.S. 108A-14(a)(8) reads as rewritten:

**"§ 108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

- ...
- (8) To supervise adult care homes under the rules and regulations of the ~~Social Services~~Medical Care Commission;
- ...."

**CHILD SUPPORT PROGRAM/ENHANCED STANDARDS**

**SECTION 10.43.(a)** The Department of Health and Human Services shall develop and implement performance standards for each of the State and county child

support enforcement offices across the State. To develop these performance standards, the Department of Health and Human Services shall evaluate other private and public child support models and national standards as well as other successful collections models. These performance standards shall include the following:

- (1) Cost per collections.
- (2) Consumer satisfaction.
- (3) Paternity establishments.
- (4) Administrative costs.
- (5) Orders established.
- (6) Collections on arrearages.
- (7) Location of absent parents.
- (8) Other related performance measures.

The Department of Health and Human Services shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department of Health and Human Services shall publish an annual performance report that shall include the statewide and local office performance of each child support office.

**SECTION 10.43.(b)** The Department of Health and Human Services shall report on its progress, in compliance with this section, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by May 1, 2006.

## **MULTIPLE RESPONSE SYSTEM**

**SECTION 10.45.(a)** The Department of Health and Human Services, Division of Social Services, shall continue working with local departments of social services to implement a multiple response system of child protection. Local departments of social services shall continue systems already in place. The multiple response system shall provide a family-centered approach to child protective services in which local departments of social services use family assessment tools and family support principles when responding to selected reports of suspected child abuse, neglect, and dependency, including establishing a system of care with child and family teams.

**SECTION 10.45.(b)** The Department of Health and Human Services shall expand this project using both State appropriations and any non-State funding sources that can be identified for this purpose. Funds appropriated in this act to the Department for this purpose may be allocated to counties for multiple response system implementation, and counties may use these funds and other resources available for this purpose.

## **FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS**

**SECTION 10.46.(a)** The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

- (1) \$390.00 per child per month for children aged birth through 5;



- (2) \$440.00 per child per month for children aged 6 through 12; and
- (3) \$490.00 per child per month for children aged 13 through 18.

Of these amounts, fifteen dollars (\$15.00) is a special needs allowance for the child.

**SECTION 10.46.(b)** The maximum rates for State participation in the adoption assistance program are established on a graduated scale as follows:

- (1) \$390.00 per child per month for children aged birth through 5;
- (2) \$440.00 per child per month for children aged 6 through 12; and
- (3) \$490.00 per child per month for children aged 13 through 18.

**SECTION 10.46.(c)** In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

**SECTION 10.46.(d)** The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

- (1) \$800.00 per child per month with indeterminate HIV status;
- (2) \$1,000 per child per month confirmed HIV-infected, asymptomatic;
- (3) \$1,200 per child per month confirmed HIV-infected, symptomatic; and
- (4) \$1,600 per child per month terminally ill with complex care needs.

## **CHILD CARING INSTITUTIONS**

**SECTION 10.47.(a)** The Office of the State Auditor shall conduct an audit to evaluate overhead rates and reimbursements for child caring institutions receiving State funding. Of the funds appropriated to the Department of Health and Human Services, the sum of one hundred fifty thousand dollars (\$150,000) shall be transferred to the State Auditor to conduct the audit. The audit shall include the following:

- (1) A detailed evaluation of each child caring institution's cost allocation processes.
- (2) A determination of whether the allocated costs are consistent in different agencies.
- (3) A determination of the basis used for cost allocation by each agency.
- (4) The methodology used to assign direct and indirect costs to specific child caring institution programs.
- (5) A determination of whether the overhead charged is reasonable for that specific type of nonprofit, based on national surveys.
- (6) A determination of how agency utilization rates impact the child caring institutions' cost allocation and subsequent State reimbursements.
- (7) An examination of rate-setting methodologies used by other states and how North Carolina's payments to child caring institutions compare to other states.
- (8) Recommendations on how to develop equitable, reasonable rates.

- (9) An examination of the feasibility of providing child caring institutions with the opportunity to compete based on providing the best service at least cost.

The Office of the State Auditor shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2006. The written report shall include copies of working papers developed during the course of the audit.

**SECTION 10.47.(b)** The Department of Health and Human Services shall establish standardized rates for child caring institutions in this State. These rates shall be effective July 1, 2006, and shall be updated annually on July 1. Rate-setting recommendations provided by the Office of the State Auditor shall be incorporated into the Department of Social Services' rate-setting methodology.

**SECTION 10.47.(c)** Until standardized rates are set, child caring institutions' maximum reimbursement shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, counties shall include county and IV-E reimbursements.

**SECTION 10.47.(d)** Minimum reimbursement for foster parents providing services through child caring institutions shall not be lower than the rates established by the General Assembly.

### **SPECIAL CHILDREN ADOPTION FUND**

**SECTION 10.48.(a)** Of the funds appropriated to the Department of Health and Human Services in this act, the sum of one hundred thousand dollars (\$100,000) shall be used to support the Special Children Adoption Fund for the 2005-2006 fiscal year. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services. No local match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

**SECTION 10.48.(b)** Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31, 2006, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

**SECTION 10.48.(c)** The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to

ensure that the funds are used according to the guidelines established in subsection (a) of this section. The Division shall implement strategies to ensure that funds that have historically reverted for this program are used for the intended purpose. The Division shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the expenditures and activities of the program no later than December 1, 2005, and June 30, 2006.

#### **STUDY TO IDENTIFY ADOPTION INCENTIVES FOR CHILDREN WHO ARE DIFFICULT TO PLACE**

**SECTION 10.49.** The Department of Health and Human Services shall conduct a study to identify potential incentives for adoption of children who are difficult to place and the associated costs for each incentive. The study shall identify incentives currently in place in individual counties and the associated costs. The study shall identify funding sources available to support each incentive. The Department shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005.

#### **LIMITATION ON STATE ABORTION FUND**

**SECTION 10.50.** The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2005-2006 and 2006-2007 fiscal years.

#### **TANF BENEFIT IMPLEMENTATION**

**SECTION 10.51.(a)** The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007", prepared by the Department of Health and Human Services and presented to the General Assembly as revised in accordance with subsection (b) of this section, except that the provision contained in the approved North Carolina Temporary Assistance for Needy Families State Plan FY 2005-2007 eliminating pay-after-performance as a benefit delivery method for two-parent families will only be implemented if the federal two-parent work participation rate is eliminated. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2005, through September 30, 2007. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2005 General Assembly.

**SECTION 10.51.(b)** The counties approved as Electing Counties in North Carolina's Temporary Assistance for Needy Families State Plan FY 2005-2007 as approved by this section are: Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, and Stokes.

**SECTION 10.51.(c)** Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2005 through 2007, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2005. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2005.

## **INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS**

**SECTION 10.51A.(a)** Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

**SECTION 10.51A.(b)** The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

- (1) An established follow-up system with a minimum of six months of follow-up services.
- (2) Detailed information on the specific interventions applied including utilization indicators and performance measurement.
- (3) Cost-benefit data.
- (4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.
- (5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
- (6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

**SECTION 10.51A.(c)** The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

**SECTION 10.51A.(d)** The Department shall report on the implementation of this section not later than February 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

## **RESIDENTIAL SCHOOLS REPORTING**

**SECTION 10.52.** The Office of Education Services shall report not later than December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the Eastern North Carolina School for the Deaf at Wilson, the North Carolina School for the Deaf at Morganton, and the Governor Morehead School for the Blind. The report shall include enrollment numbers at the schools, the budgets, and the academic status of the schools as defined under the ABCs program.

## **FUNDS FOR SCHOOL NURSES**

**SECTION 10.53.(a)** Of the funds appropriated in this act to the Department of Health and Human Services, the sum of two million five hundred thousand dollars (\$2,500,000) for the 2005-2006 fiscal year, and the sum of two million five hundred thousand dollars (\$2,500,000) for the 2006-2007 fiscal year shall be used for the school nurse funding initiative. The Department of Health and Human Services, Division of Public Health, in conjunction with the Department of Public Instruction, shall provide funds to communities to hire school nurses. The program will fund 50 permanent local nurses. The criteria shall include determining the areas in greatest need for school nurses with the greatest inability to pay for these nurses. Other criteria to be considered shall include: (i) the current nurse-to-student ratio; (ii) the economic status of the community; and (iii) the health needs of area children.

There shall be no supplanting of local, State, or federal funds with these funds. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funding shall be used for direct services.

The Department of Health and Human Services shall report on the use of funds allocated under this section by December 1, 2005, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.53.(b)** All school nurses funded with State funds appropriated in this act shall participate, as needed, in child and family teams established in this act.

## **EARLY INTERVENTION REPORTING AND EVALUATION**

**SECTION 10.54.(a)** The Department of Health and Human Services, Division of Public Health, shall report on Early Intervention services. The report shall include the number of children served, the number and types of services and evaluations provided, and the budget for each Children's Developmental Services Agency. In addition, the Division of Public Health shall evaluate its Early Intervention Program provider network, including provider certification and continuing education requirements.

**SECTION 10.54.(b)** The Department of Health and Human Services shall analyze the reimbursement rates for Early Intervention services, and may adjust rates according to the findings of the analysis.

**SECTION 10.54.(c)** The Division of Public Health shall analyze the program funding for the Children with Special Needs Program and shall develop a plan to utilize these funds within the Early Intervention Program. The Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than December 1, 2005.

### **EARLY INTERVENTION PROGRAM RULES ADOPTED BY COMMISSION FOR HEALTH SERVICES**

**SECTION 10.54A.** Part 1 of Article 5 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

**"§ 130A-126. Rule-making authority for birth – three-year-old early intervention program.**

The rule-making authority for the birth – three-year-old early intervention program through Part C of the Individuals with Disabilities Act (IDEA) is transferred from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the Commission for Health Services."

### **CHRONIC DISEASE PREVENTION ACTIVITIES INVENTORY**

**SECTION 10.56.** In order to reduce costs and eliminate duplication of effort, the Department of Health and Human Services shall create an inventory of all chronic disease prevention activities, funding, staffing, and other resources for these activities, including funding and resources for related task forces and committees. The inventory shall include at a minimum, heart disease, stroke, diabetes, osteoporosis, and cancer. The Department shall create a plan to combine task forces and activities for chronic disease prevention and shall explore collapsing these task forces and committees into the Healthy Carolinians structure. The Department shall report on the inventory and the Department's recommendations not later than February 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

### **PILOT PROGRAM FOR AUTOMATIC EXTERNAL DEFIBRILLATORS IN PUBLIC BUILDINGS**

**SECTION 10.57.(a)** The Department of Health and Human Services, Division of Public Health, shall develop a pilot program to place Automated External Defibrillators (AED) in public buildings, including public gymnasiums, that do not have an operational AED in place. In selecting pilot sites, the Department shall ensure geographic representation of the State.

**SECTION 10.57.(b)** Of the funds appropriated in this act to the Department of Health and Human Services, the sum of seventeen thousand dollars (\$17,000) for the 2005-2006 fiscal year, and the sum of six thousand dollars (\$6,000) for the 2006-2007 fiscal year shall be used to purchase AED units, conduct on-site training at the pilot sites, and conduct ongoing education and awareness campaigns to the general public in the piloted sites. The Department shall ensure that training in the use of an AED shall be conducted in accordance with G.S. 90-21.15(b)(3). The Heart Disease and Stroke Prevention Branch of the Division of Public Health shall be responsible for the purchase of AEDs, the training of pilot program participants, and evaluation of the pilot program.

**SECTION 10.57.(c)** The Department of Health and Human Services shall report on the location, establishment, and implementation of the pilot sites to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

### **IMMUNIZATION PROGRAM FUNDING**

**SECTION 10.58.(a)** Of the funds appropriated in this act to the Department of Health and Human Services for childhood immunization programs for positions, operating support, equipment, and pharmaceuticals, the sum of one million dollars (\$1,000,000) for the 2005-2006 fiscal year and the sum of one million dollars (\$1,000,000) for the 2006-2007 fiscal year may be used for projects and activities that are also designed to increase childhood immunization rates in North Carolina. These projects and activities shall include the following:

- (1) Outreach efforts at the State and local levels to improve service delivery of vaccines. Outreach efforts may include educational seminars, media advertising, support services to parents to enable children to be transported to clinics, longer operating hours for clinics, and mobile vaccine units.
- (2) Continued development of an automated immunization registry.

**SECTION 10.58.(b)** Funds authorized to be used for immunization efforts under subsection (a) of this section shall not be used to fund additional State positions in the Department of Health and Human Services or contracts, except for contracts to develop an automated immunization registry or contracts with local health departments for outreach.

### **AIDS DRUG ASSISTANCE PROGRAM**

**SECTION 10.59.(a)** For the 2005-2006 fiscal year and for the 2006-2007 fiscal year, HIV-positive individuals with incomes at or below one hundred twenty-five percent (125%) of the federal poverty level are eligible for participation in ADAP. Eligibility for participation in ADAP during the 2005-2007 fiscal biennium shall not be extended to individuals with incomes above one hundred twenty-five percent (125%) of the federal poverty level.

**SECTION 10.59.(b)** The Department of Health and Human Services shall make an interim report on ADAP program utilization by January 1, 2006, and a final

report on ADAP program utilization by May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on ADAP. The reports shall include ADAP program utilization as follows:

- (1) Monthly data on total cumulative AIDS/HIV cases reported in North Carolina.
- (2) Monthly data on the number of individuals who have applied to participate in ADAP that have been determined to be ineligible.
- (3) Monthly data on the income level of participants in ADAP and of individuals who have applied to participate in ADAP who have been determined to be ineligible.
- (4) Monthly data on fiscal year-to-date expenditures of ADAP. The interim report shall contain monthly data on the calendar year-to-date expenditures of ADAP.
- (5) An update on the status of the information management system.
- (6) Monthly data on ADAP usage patterns and demographics of participants in ADAP.
- (7) Fiscal year-to-date budget information.
- (8) The status of the new system of management for ADAP, the costs savings realized from the new system, and recommendations for improving the system.

## **HEALTH INFORMATION SYSTEMS DEVELOPMENT FUNDS**

**SECTION 10.59A.(a)** The sum of four million sixty-five thousand four hundred sixty-nine dollars (\$4,065,469) is appropriated from Budget Code 24430, Fund Code 2117, to the Department of Health and Human Services, Division of Public Health, for the 2005-2006 fiscal year. These funds shall be used for the development and implementation of the Health Information Systems (HIS), an initiative that will provide an automated means of capturing, monitoring, reporting, and billing services provided in local health departments, CDSAs, and the State Public Health Lab. The HIS will allow for interfaces to local health departments' own vendor systems and is intended to replace the outdated Health Services Information System.

**SECTION 10.59A.(b)** The Department of Health and Human Services, Division of Public Health, shall report on the use of these funds to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

## **FUNDS FOR PILOT PROGRAM TO RECRUIT MINORITY STUDENTS INTO PHARMACY SCHOOLS**

**SECTION 10.59B.** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of three hundred thousand dollars (\$300,000) for the 2005-2006 fiscal year shall be used to develop a pilot program for the recruitment of minority students into pharmacy schools. The pilot



program shall include all pharmacy schools willing to participate as well as community colleges with equipment and incentives for students that might be pharmacy school candidates. The Department shall report on the progress of the pilot program to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

#### **HEALTH-RELATED INITIATIVES FUNDS**

**SECTION 10.59C.** The sum of sixty-eight million dollars (\$68,000,000) is appropriated from Budget Code 23460, Fund Code 2120, to the Health and Wellness Trust Fund for the 2005-2006 fiscal year for the purpose of health-related initiatives as approved by the Health and Wellness Trust Fund Commission, other projects allowed by G.S. 147-86.30, and line items allowed under G.S. 143-23.

#### **COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE**

**SECTION 10.59E.** Of funds appropriated in this act to the Department of Health and Human Services for the 2005-2006 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) to build capacity of faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to white persons. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths. These funds shall also be used to support one FTE in the Department of Health and Human Services to monitor, track, and evaluate grantees' progress in meeting performance-based standards and outcomes established by the Department.

#### **GOVERNOR'S VISION CARE PROGRAM ESTABLISHED**

**SECTION 10.59F.(a)** Program established. – There is established in the Department of Health and Human Services, Division of Public Health, the Governor's Vision Care Program. The purpose of the Program is to provide funds for early detection and correction of vision problems in children enrolled in grades K through 3 who are eligible for services under the Program. These funds shall be allocated to reimburse optometrists and ophthalmologists licensed to practice in this State for the comprehensive eye examination, including necessary spectacles, provided to meet the requirements of G.S. 130A-440.1.

**SECTION 10.59F.(b)** Eligibility. – Children eligible for services under this section shall be those with a family income not exceeding two hundred fifty percent (250%) of the federal poverty level, who do not have private health insurance coverage, and are not eligible for services under NC Health Choice, Medicaid, the Department of Health and Human Services' Commission for the Blind programs, VSP's Sight for Students, or the Lions Club Foundation.

**SECTION 10.59F.(c)** For the purposes of this section, "comprehensive eye examination" means a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

- (1) Visual acuity at distance and near;
- (2) Alignment and ocular motility;
- (3) Binocular fusion abnormalities, including tracking;
- (4) Actual refractive errors, including verification by subject means;
- (5) Any color vision disorder;
- (6) Intraocular pressure as may be medically appropriate; and
- (7) Ocular health, including internal and external assessment.

Routine screening that does not encompass all of the examination components listed in this subsection does not qualify for reimbursement from the Program.

**SECTION 10.59F.(d)** Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 34. Governor's Commission on Early Childhood Vision Care.

**"§ 143B-216.67. Governor's Commission on Early Childhood Vision Care.**

(a) There is established the Governor's Commission on Early Childhood Vision Care ("Commission"). The Commission shall be located in the Department of Health and Human Services for administrative and budgetary purposes only.

(b) The Commission shall consist of six members appointed as follows:

- (1) Two optometrists and two ophthalmologists, each of whom is licensed to practice in this State, appointed by the Governor;
- (2) One optometrist licensed to practice in this State appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (3) One ophthalmologist licensed to practice in this State appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

The initial members appointed by the General Assembly shall each serve a one-year term. The initial members appointed by the Governor shall each serve a two-year term. Subsequent appointments shall be for three-year terms. Vacancies shall be filled by the original appointing authority.

(c) The Commission shall adopt rules to implement and administer the Governor's Vision Care Program established under this section. The rules shall address:

- (1) Accepting and processing of applications by families for Program services.
- (2) Verification of applicant income eligibility.
- (3) Reimbursement to providers for services provided to eligible participants.
- (4) Informing providers and the general public about the Program.
- (5) Other duties necessary to implement the purposes and requirements of this section.

The Commission shall develop alternative ways for providing services to children who qualify for the Program when funding for Program services has been exhausted.

(d) Commission members who are officials or employees of the State or local government agencies shall be paid per diem, subsistence, and travel expenses in accordance with G.S. 138-6. All other Commission members shall be paid in accordance with G.S. 138-5.

(e) The Chair of the Commission shall be an ophthalmologist or optometrist appointed by the Governor to serve alternately from year to year. The Commission shall meet upon the call of the Chair. A majority of the Commission members shall constitute a quorum. The Department of Health and Human Services shall provide meeting space and staff to assist the Commission."

**SECTION 10.59F.(e)** Funds appropriated in this act to the Reserve for the Governor's Vision Care Program shall be used to reimburse providers for comprehensive eye examination services, including necessary spectacles, required under this section.

**SECTION 10.59F.(f)** Not later than May 1, 2006, the Department of Health and Human Services shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on the implementation of this section. The report shall include the number of children who were exempt from the comprehensive eye examination requirement under G.S. 130A-440.1(a).

**SECTION 10.59F.(g)** Article 18 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

**"§ 130A-440.1. Comprehensive eye examination required.**

(a) Every child in this State entering kindergarten in the public schools shall obtain a comprehensive eye examination pursuant to the terms of this section not more than six months prior to the date of school entry.

(b) The comprehensive eye examination required under this section shall be conducted by an optometrist or ophthalmologist licensed to practice in this State. No child shall attend kindergarten unless a comprehensive eye examination transmittal form, developed pursuant to G.S. 130A-441, indicating that the child has received the comprehensive eye examination required by this section, is presented to the school principal, except in cases where the child has moved to North Carolina within the 60 days immediately preceding school entry, in which case the child shall have 60 days from the date of school entry to submit the eye examination transmittal form required under this section. In the event a child is unable to obtain services after the 60-day period has elapsed, the principal shall report this information to the Commission so that the Commission may identify alternative ways to provide services to these children.

The comprehensive eye examination shall consist of a complete and thorough examination of the eye and human visual system that includes an evaluation, determination, and diagnosis of:

- (1) Visual acuity at distance and near;
- (2) Alignment and ocular motility;
- (3) Binocular fusion abnormalities, including tracking;

- (4) Actual refractive errors, including verification by subject means;
- (5) Any color vision disorder;
- (6) Intraocular pressure as may be medically appropriate; and
- (7) Ocular health, including internal and external assessment.

Health assessment vision screening under G.S. 130A-440 does not meet the requirements of this section.

(c) The comprehensive eye examination transmittal form shall contain a summary of the comprehensive eye examination performed by the optometrist or ophthalmologist. Any treatment recommendations by the optometrist or ophthalmologist, such as spectacles for schoolwork, shall appear in the summary and school health card.

(d) This section shall not apply to children entering kindergarten in private church schools, schools of religious charter, or qualified nonpublic schools regulated by Article 39 of Chapter 115C of the General Statutes.

(e) G.S. 130A-441, 130A-442, and 130A-443, pertaining to health assessments, apply to comprehensive eye examinations required under this section."

**SECTION 10.59F.(h)** This section becomes effective beginning with the 2006-2007 school year.

## **LRC STUDY SCHOOL-BASED AND SCHOOL-LINKED HEALTH CENTERS**

**SECTION 10.59G.(a)** The Legislative Research Commission may study and evaluate the number of school-based and school-linked health centers in providing primary care, mental health, and other health care services to determine the centers' impact on providing health care. In conducting the study, the Commission may consider the following:

- (1) The health centers' role in contributing to the health and well-being of adolescents and in reducing the cost of health care.
- (2) Adequacy of current funding and measures needed to sustain the centers as part of the overall school health strategy to improve the health of adolescents.
- (3) The secured-care rate for students who have access to not only a school nurse but also to a school-based or school-linked health center and whether students receive care in a timely manner from appropriate health care providers.
- (4) Other matters related to the efficacy and efficiency of school-based and school-linked health centers such that care provided enables students to remain in class, be productive and attentive while in class, and have fewer absences from school.

To assist in the study, the Commission may consult with such stakeholders as the North Carolina Association of School-Based and School-Linked Health Centers, the North Carolina Pediatric Society, the Adolescent Pregnancy Prevention Coalition of North Carolina, the Department of Health and Human Services, Division of Public Health, and other interested parties.

**SECTION 10.59G.(b)** The Legislative Research Commission may make an interim report, including proposed legislation, to the 2006 Regular Session of the 2005 General Assembly and shall make its final report to the 2007 General Assembly upon its convening.

**SECTION 10.59G.(c)** The Legislative Services Officer shall allocate funds appropriated in this act to the General Assembly for the expenditures of the Legislative Services Commission in conducting this study.

#### **FUNDS FOR RURAL HOSPITAL OPERATIONS**

**SECTION 10.59H.** Of the funds appropriated in this act to the Department of Health and Human Services, the sum of three million dollars (\$3,000,000) for the 2005-2006 fiscal year shall be allocated to rural hospitals in need of assistance with the operations of the hospital. The Department of Health and Human Services shall convene an advisory group to establish criteria for distribution of these funds. The criteria shall include the number of indigent patients served, the number of Medicaid recipients served, the per capita income of the area served by the hospital, and the financial needs of the hospital. The Department shall report on the allocation of these funds to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2006.

#### **CHILD CARE FUNDS MATCHING REQUIREMENT**

**SECTION 10.60.** No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving any State child care funds appropriated by this act unless federal law requires a match. This shall not prohibit any locality from spending local funds for child care services.

#### **CHILD CARE ALLOCATION FORMULA**

**SECTION 10.61.(a)** The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

- (1) Funds shall be allocated based upon the projected cost of serving children in a county under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.
- (2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

**SECTION 10.61.(b)** The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs

of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

**SECTION 10.61.(c)** Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty-two million dollars (\$22,000,000) in federal block grant funds and State funds appropriated for fiscal years 2004-2005 and 2005-2006 for child care services. These funds shall be allocated to prevent termination of child care services.

## **CHILD CARE SUBSIDY RATES**

**SECTION 10.62.(a)** The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

**SECTION 10.62.(b)** Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

**SECTION 10.62.(c)** Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

- (1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.
- (2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.
- (3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.
- (4) Maximum payment rates shall also be calculated periodically by the Division of Child Development for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

**SECTION 10.62.(d)** Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

- (1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.

- (2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

**SECTION 10.62.(e)** A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to unsubsidized privately paying parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

**SECTION 10.62.(f)** Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

**SECTION 10.62.(g)** Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

**SECTION 10.62.(h)** Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

- (1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.
- (2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.
- (3) The child for whom a child care subsidy is sought is a citizen of the United States.

## **CHILD CARE REVOLVING LOAN**

**SECTION 10.63.** Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral

for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

## **EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS**

**SECTION 10.64.(a)** Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

**SECTION 10.64.(b)** The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

- (1) For amounts of five thousand dollars (\$5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.
- (2) For amounts greater than five thousand dollars (\$5,000), but less than fifteen thousand dollars (\$15,000), three written quotes.
- (3) For amounts of fifteen thousand dollars (\$15,000) or more, but less than forty thousand dollars (\$40,000), a request for proposal process.
- (4) For amounts of forty thousand dollars (\$40,000) or more, a request for proposal process and advertising in a major newspaper.

**SECTION 10.64.(c)** The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

- (1) Be verifiable from the contractor's records.



- (2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
- (3) Not include expenses funded by State funds.
- (4) Be supplemental to and not supplant preexisting resources for related program activities.
- (5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
- (6) Be otherwise allowable under federal or State law.
- (7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
- (8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

**SECTION 10.64.(d)** The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

**SECTION 10.64.(e)** The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2005-2006 and 2006-2007 shall be administered and distributed in the following manner:

- (1) Capital expenditures are prohibited for fiscal years 2005-2006 and 2006-2007. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143-34.40.
- (2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2005-2006 and 2006-2007.

**SECTION 10.64.(f)** A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

**SECTION 10.64.(g)** For fiscal years 2005-2006 and 2006-2007, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars (\$52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement.

#### **SMART START FUNDING STUDY**

**SECTION 10.65.(a)** The North Carolina Partnership for Children, Inc., shall study its allocation of funds to local partnerships. The North Carolina Partnership for Children, Inc., shall study funding equity among all counties and local partnerships based on population, the number of children from birth to five years of age residing in the county region, economic indicators, and the quality of existing child care. The North Carolina Partnership for Children, Inc., shall develop strategies to alleviate the inequity of funds to local partnerships.

**SECTION 10.65.(b)** The North Carolina Partnership for Children, Inc., shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

#### **ANALYZE CHILD CARE SUBSIDY REIMBURSEMENT SYSTEM**

**SECTION 10.66.(a)** The Department of Health and Human Services, Division of Child Development, shall conduct an analysis of the child care subsidy reimbursement system. The Division of Child Development shall conduct the analysis as follows:

- (1) Compare surveyed rates from the 2005 child care market survey to existing reimbursement rates and identify counties and levels of disparity of current market rates to subsidy reimbursements.
- (2) Compare overall compensation for child care workers by county and determine if there is a correlation with child care quality and subsidy reimbursements.
- (3) Examine, by county, the prevalence of child care providers who charge parents a differential fee to make up the difference between private and subsidy reimbursement rates.
- (4) Examine the impact:
  - a. That child care reimbursement rates have on providing families' access to all levels of child care; and
  - b. Of North Carolina Partnership for Children, Inc., funding on market rates and quality of child care by comparing the length of time local partnerships have been present in the counties, the amount local partnerships spend on child care quality initiatives, number of higher quality child care centers and homes, and the allocation to the county by percentage of need.

**SECTION 10.66.(b)** The Division of Child Development shall develop strategies to implement market rate equity among counties and submit a report of its

findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 30, 2006.

## **MORE AT FOUR**

**SECTION 10.67.(a)** Of the funds appropriated in this act to the Department of Health and Human Services, the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars (\$66,646,653) for the 2005-2006 fiscal year and the sum of sixty-six million six hundred forty-six thousand six hundred fifty-three dollars (\$66,646,653) for the 2006-2007 fiscal year shall be used to implement "More at Four", a voluntary prekindergarten program for at-risk four-year-olds.

**SECTION 10.67.(b)** The Department of Health and Human Services and the Department of Public Instruction, with guidance from the Task Force, shall continue the implementation of the "More at Four" prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten. The program is available statewide to all counties that choose to participate, including underserved areas. The goal of the program is to provide quality prekindergarten services to a greater number of at-risk children in order to enhance kindergarten readiness for these children. The program shall be consistent with standards and assessments established jointly by the Department of Health and Human Services and the Department of Public Instruction. The program shall include:

- (1) A process and system for identifying children at risk of academic failure.
- (2) A process and system for identifying children who are not being served first priority in formal early education programs, such as child care, public or private preschools, Head Start, Early Head Start, early intervention programs, or other such programs, who demonstrate educational needs, and who are eligible to enter kindergarten the next school year, as well as children who are underserved.
- (3) A curriculum or several curricula that are recommended by the Task Force. The Task Force will identify and approve appropriate research-based curricula. These curricula shall: (i) focus primarily on oral language and emergent literacy; (ii) engage children through key experiences and provide background knowledge requisite for formal learning and successful reading in the early elementary years; (iii) involve active learning; (iv) promote measurable kindergarten language-readiness skills that focus on emergent literacy and mathematical skills; and (v) develop skills that will prepare children emotionally and socially for kindergarten.
- (4) An emphasis on ongoing family involvement with the prekindergarten program.
- (5) Evaluation of child progress through preassessment and postassessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.

- (6) Guidelines for a system to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.
- (7) A system built upon existing local school boards and systems, private child care providers, and other entities that demonstrate the ability to establish or expand prekindergarten capacity.
- (8) A quality-control system. Participating providers shall comply with standards and guidelines as established by the Department of Health and Human Services, the Department of Public Instruction, and the Task Force. The Department may use the child care rating system to assist in determining program participation.
- (9) Standards for minimum teacher qualifications. A portion of the classroom sites initially funded shall have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.
- (10) A local contribution. Programs must demonstrate that they are accessing resources other than "More at Four".
- (11) A system of accountability.
- (12) Consideration of the reallocation of existing funds. In order to maximize current funding and resources, the Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall consider the reallocation of existing funds from State and local programs that provide prekindergarten-related care and services.

**SECTION 10.67.(c)** The Department of Health and Human Services shall plan for expansion of the "More at Four" program within existing resources to include four- and five-star-rated centers and schools serving four-year-olds and develop guidelines for these programs. The Department shall analyze guidelines for use of the "More at Four" funds, State subsidy funds, and Smart Start subsidy funds and devise a complementary plan for administration of funds for all four-year-old classrooms. The four- and five-star-rated centers that choose to become a "More at Four" program shall, at a minimum, receive curricula and access to training and workshops for "More at Four" programs and be considered along with other "More at Four" programs for T.E.A.C.H. funding. The Department shall ensure that no individual receives funding from more than one source for the same purpose or activity during the same funding period. For purposes of this subsection, sources shall include T.E.A.C.H., W.A.G.E.\$., and T.E.A.C.H. Health Insurance programs for individual recipients.

The "More at Four" program shall review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots shall occur through December 30, 2005, at which time any remaining funds for slots unfilled shall be used to meet the needs of the waiting list for subsidized child care.

**SECTION 10.67.(d)** The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall submit a report by February 1, 2006, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on

Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. This final report shall include the following:

- (1) The number of children participating in the program.
- (2) The number of children participating in the program who have never been served in other early education programs, such as child care, public or private preschool, Head Start, Early Head Start, or early intervention programs.
- (3) The expected expenditures for the programs and the source of the local match for each grantee.
- (4) The location of program sites and the corresponding number of children participating in the program at each site.
- (5) Activities involving Child Find in counties.
- (6) A comprehensive cost analysis of the program, including the cost per child served by the program.
- (7) The plan for expansion of "More at Four" through existing resources as outlined in this section.

**SECTION 10.67.(e)** For the 2005-2006 and the 2006-2007 fiscal years, the "More at Four" program shall establish income eligibility requirements for the program not to exceed seventy-five percent (75%) of the State median income to make the program consistent with the child care subsidy requirements. Up to twenty percent (20%) of children enrolled may have family incomes in excess of seventy-five percent (75%) of median income if they have other designated risk factors.

**SECTION 10.67.(f)** The "More at Four" program funding shall not supplant any funding for classrooms serving four-year-olds as of the 2003-2004 fiscal year.

**SECTION 10.67.(g)** The Department of Health and Human Services, Division of Child Development, shall review and evaluate the early literacy project in Davie County and consider incorporation of this curriculum into the "More at Four" program.

## **OFFICE OF SCHOOL READINESS**

**SECTION 10.68.(a)** The Department of Health and Human Services, the Department of Public Instruction, and the Office of the Governor shall establish a study group to develop a plan for the creation of an Office of School Readiness. In conducting the study, the study group shall identify all State programs impacting children's readiness for school and the ways in which these State programs currently coordinate. The study shall include a survey of other states to determine organizational structures that exist to manage prekindergarten programs, child care licensure and regulation, and other early childhood-related programs. The study group shall also study the advantages or disadvantages of transferring the "More at Four" program to the Department of Public Instruction or the Department of Health and Human Services and any advantages or disadvantages the transfer may have on children being served by the "More at Four" program.

**SECTION 10.68.(b)** After conducting the study, the study group shall develop a recommendation for the structure of North Carolina's prekindergarten and other early childhood-related programs and develop a plan for the implementation of these recommendations.

**SECTION 10.68.(c)** Effective when this act becomes law, early childhood-related programs, including the "More at Four" program, Head Start program, and child care licensure and regulation, shall remain in their current departments until the General Assembly approves the plan.

**SECTION 10.68.(d)** The study group shall report the results of its study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006.

## **PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

### **PESTICIDE DISPOSAL PROGRAM**

**SECTION 11.1.** G.S. 143-468(b) reads as rewritten:

"(b) The Pesticide Environmental Trust Fund is established as a nonreverting account within the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall administer the Fund. The additional assessment imposed by G.S. 143-442(b) on the registration of a brand or grade of pesticide shall be credited to the Fund. The Department shall distribute money in the Fund as follows:

- (1) Two and one-half percent (2.5%) to North Carolina State University Cooperative Extension Service to enhance its agromedicine efforts in cooperation with East Carolina University School of Medicine.
- (2) Two and one-half percent (2.5%) to East Carolina University School of Medicine to enhance its agromedicine efforts in cooperation with North Carolina State University Cooperative Extension Service.
- (3) Twenty percent (20%) to North Carolina State University, Department of Toxicology, to establish and maintain an extension agromedicine specialist position.
- (4) Seventy-five percent (75%) to the Department of Agriculture and Consumer Services for the costs of administering its pesticide disposal program, including the salaries and support of staff for the pesticide disposal program, and for its environmental programs, as directed by the Board, including establishing a pesticide container management program to enhance its pesticide disposal program and its water quality initiatives."

### **TIMBER SALES RECEIPTS FOR CAPITAL IMPROVEMENTS AT AGRICULTURAL RESEARCH STATIONS AND FARMS**

**SECTION 11.2.** The sum of one million thirty-three thousand one hundred dollars (\$1,033,100) shall be transferred from the Department of Agriculture and

Consumer Services' timber sales capital improvement account in the Department of Agriculture and Consumer Services as such funds become available during the 2005-2006 fiscal year, and used by the Department for the following capital improvements projects at agricultural research stations and research farms:

- (1) \$378,000 for improvements at the swine facility at the Cherry Research Farm.
- (2) \$285,500 for renovation of dairy facilities at the Cherry Research Farm.
- (3) \$369,600 for land acquisition and development at the Tidewater Research Station.

### **PLANT CONSERVATION PROGRAM FUNDS**

**SECTION 11.3.** From funds received from the sale of timber that are deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture and Consumer Services in a capital improvement account, the sum of twenty thousand dollars (\$20,000) shall be transferred to the Department of Agriculture and Consumer Services to be used by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, and environmental studies.

### **INCREASE FUNDS FOR NORTH CAROLINA GRAPE GROWERS COUNCIL**

**SECTION 11.4.** G.S. 105-113.81A reads as rewritten:

**"§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.**

The Secretary shall on a quarterly basis credit to the Department of Agriculture and Consumer Services the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of Agriculture and Consumer Services under this section shall not exceed ~~three hundred fifty thousand dollars (\$350,000)~~ five hundred thousand dollars (\$500,000) per fiscal year. The Department of Agriculture and Consumer Services shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of Agriculture and Consumer Services under this section that are not expended by June 30 of any fiscal year may not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

### **UNIFORM REGULATION OF ANIMAL SHELTERS**

**SECTION 11.5.(a)** G.S. 19A-23 reads as rewritten:

**"§ 19A-23. Definitions.**

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

- (1) "Adequate feed" means the provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such foodstuff shall be served in a sanitized receptacle, dish, or container.
- (2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.
- (3) "Ambient temperature" means the temperature surrounding the animal.
- (4) "Animal" means any domestic dog (*Canis familiaris*), or domestic cat (*Felis domestica*).
- (5) "Animal shelter" means a facility which is used to house or contain seized, stray, homeless, quarantined, abandoned or unwanted animals and which is under contract with, owned, operated, or maintained by a county, city, town, or other municipality, or by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, ~~protection and~~ protection, rehabilitation, or humane treatment of animals.
- (5a) "Boarding kennel" means a facility or establishment which regularly offers to the public the service of boarding dogs or cats or both for a fee. Such a facility or establishment may, in addition to providing shelter, food and water, offer grooming or other services for dogs and/or cats.
- (6) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.
- (7) "Dealer" means any person who sells, exchanges, or donates, or offers to sell, exchange, or donate animals to another dealer, pet shop, or research facility; provided, however, that an individual who breeds and raises on his own premises no more than the offspring of five canine or feline females per year, unless bred and raised specifically for research purposes shall not be considered to be a dealer for the purposes of this Article.
- (8) "Director" means the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services.
- (9) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.



- (10) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.
- (11) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.
- (12) "Pet shop" means a person or establishment that acquires for the purposes of resale animals bred by others whether as owner, agent, or on consignment, and that sells, trades or offers to sell or trade such animals to the general public at retail or wholesale.
- (13) "Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage compartment or hutch.
- (14) "Public auction" means any place or location where dogs or cats are sold at auction to the highest bidder regardless of whether such dogs or cats are offered as individuals, as a group, or by weight.
- (15) "Research facility" means any place, laboratory, or institution at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.
- (16) "Sanitize" means to make physically clean and to remove and destroy to a practical minimum, agents injurious to health."

**SECTION 11.5.(b)** G.S. 19A-24 reads as rewritten:

**"§ 19A-24. Powers of Board of Agriculture.**

The Board of Agriculture ~~may~~shall:

- (1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors, or both employees and supervisors, of not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.
- (2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.
- (3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.
- (4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.
- (5) Adopt rules on the euthanasia of animals in the possession or custody of any person licensed under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment,

the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require (i) that only commercially compressed carbon monoxide gas is approved for use, and (ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process."

**SECTION 11.5.(c)** Chapter 19A of the General Statutes is amended by adding a new section to read:

**"§ 19A-41. Legal representation by the Attorney General.**

It shall be the duty of the Attorney General to represent the Commissioner of Agriculture and the Department of Agriculture and Consumer Services, or to designate some member of his staff to represent the Commissioner and the Department, in all actions or proceedings in connection with this Article."

**SECTION 11.5.(d)** This section becomes effective October 1, 2005.

**PART XII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**STATE MATCH FOR FEDERAL SAFE DRINKING WATER ACT FUNDS**

**SECTION 12.1.** Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to one million five hundred thousand dollars (\$1,500,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2005-2006 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5.

**EXPAND EXPRESS REVIEW PROGRAM STATEWIDE**

**SECTION 12.2.(a)** Part 1 of Article 7 of Chapter 143B of the General Statutes is amended by adding two new sections to read:

**"§ 143B-279.13. Express permit and certification reviews.**

(a) The Department of Environment and Natural Resources shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to become supported by the fees determined pursuant to subsection (b) of this section. The Department of Environment and Natural Resources shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

- (1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.
- (2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.
- (3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.
- (4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.
- (5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(b) The Department of Environment and Natural Resources may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars (\$5,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars (\$4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars (\$4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environment and Natural Resources other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum permit application fee charged for the express review of a project application shall not exceed four thousand dollars (\$4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environment and Natural Resources may establish the procedure by which the amount of the fees under this subsection is determined, and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) No later than March 1 of each year, the Department of Environment and Natural Resources shall report to the Fiscal Research Division and the Environmental Review Commission its findings on the success of the program under this section and any other findings or recommendations, including any legislative proposals that it deems pertinent.

**"§ 143B-279.14. Express Review Fund.**

The Express Review Fund is created as a special nonreverting fund. All fees collected under G.S. 143B-279.13 shall be credited to the Express Review Fund. The

Express Review Fund shall be used for the costs of implementing the express review program under G.S. 143B-279.13 and the costs of administering the program, including the salaries and support of the program's staff. If the express review program is abolished, the funds in the Express Review Fund shall be credited to the General Fund."

**SECTION 12.2.(b)** The Department of Environment and Natural Resources shall expand to a statewide program that operates in each regional office of the Department the Express Review Pilot Program established by Section 11.4A of S.L. 2003-284 and expanded by Section 12.9 of S.L. 2004-124, and the provisions of G.S. 143B-279.13, as enacted by subsection (a) of this section, shall apply to this statewide program.

**SECTION 12.2.(c)** The Department of Environment and Natural Resources shall establish and support 12 additional positions to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to seven hundred thirty-six thousand six hundred twenty-nine dollars (\$736,629) for the 2005-2006 fiscal year and up to six hundred seventy-one thousand four hundred nine dollars (\$671,409) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to establish and support these 12 positions.

**SECTION 12.2.(d)** The Department of Environment and Natural Resources shall continue and support the four positions established under Section 12.9(c) of S.L. 2004-124 to administer the statewide express review program under G.S. 143B-279.13, as enacted by subsection (a) of this section. Up to two hundred twenty-three thousand eight hundred three dollars (\$223,803) for the 2005-2006 fiscal year and up to two hundred twenty-three thousand eight hundred three dollars (\$223,803) for the 2006-2007 fiscal year shall be allocated from the Express Review Fund created in G.S. 143B-279.14, as enacted by subsection (a) of this section, to continue and support these four positions.

## **SEDIMENTATION EDUCATION FUNDS**

**SECTION 12.3.** The Department of Environment and Natural Resources shall use the funds appropriated in this act to the Department of Environment and Natural Resources for the 2005-2006 fiscal year and for the 2006-2007 fiscal year for sedimentation education for only the following:

- (1) Sedimentation education activities that provide technical assistance to local erosion and sedimentation control programs under G.S. 113A-60; or
- (2) Sedimentation education to professionals involved in developing erosion and sedimentation control plans for which prior approval is required under Article 4 of Chapter 113A of the General Statutes.

## **FUNDS TO IMPLEMENT FISHING LICENSE REQUIREMENTS LEGISLATION/CONTINGENT REPEAL OF SALTWATER FISHING LICENSE REQUIREMENT**

**SECTION 12.4.(a)** The Wildlife Resources Commission may disburse up to one million dollars (\$1,000,000) from the Wildlife Resources Fund to implement Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) if either bill becomes law no later than 30 days after adjournment of the 2005 Regular Session.

**SECTION 12.4.(b)** The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

**SECTION 12.4.(c)** Sections 1 through 4 and Sections 6 through 12 of S.L. 2004-187 and Section 12.16 of S.L. 2004-124 are repealed unless Senate Bill 1126 (Amend Fishing License Requirements-2) or House Bill 1092 (Amend Fishing License Requirements) becomes law no later than 30 days after the adjournment in 2005 of the 2005 Regular Session under a joint resolution.

**REPORT ON NATURAL HERITAGE PROGRAM**

**SECTION 12.4A.** No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the General Assembly and to the Fiscal Research Division on the Natural Heritage Program under Article 9A of Chapter 113A of the General Statutes. The report shall include an explanation of the duties and activities of each position that serves as staff to the Program, a summary of what has been accomplished under the Program each fiscal year since its inception, and justification for continuing the Program at its current staff level.

**GRASSROOTS SCIENCE PROGRAM**

**SECTION 12.5.(a)** Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million one hundred ninety-seven thousand seven hundred sixty-two dollars (\$3,197,762) for the 2005-2006 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2005-2006
Aurora Fossil Museum	\$59,057
Cape Fear Museum	\$161,007
Carolina Raptor Center	\$112,174
Catawba Science Center	\$133,429
Colburn Gem and Mineral Museum, Inc.	\$74,545
Discovery Place	\$662,865
Eastern NC Regional Science Center	\$50,000
Elizabeth City Science Center	\$50,000
Fascinate-U	\$80,742
Granville County Museum Commission, Inc.–Harris Gallery	\$56,422
Greensboro Children's Museum	\$135,076
The Health Adventure Museum of Pack	

Place Education, Arts and Science Center, Inc.	\$134,499
Highlands Nature Center	\$79,268
Imagination Station	\$86,034
Kidsenses	\$50,000
Museum of Coastal Carolina	\$74,192
Natural Science Center of Greensboro	\$186,354
North Carolina Museum of Life and Science	\$379,826
Rocky Mount Children's Museum	\$72,254
Schiele Museum of Natural History	\$229,547
Sci Works Science Center and Environmental Park of Forsyth County	\$146,499
Western North Carolina Nature Center	\$112,879
Wilmington Children's Museum	\$71,093
Total	\$3,197,762

**SECTION 12.5.(b)** No later than March 1, 2006, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

- (1) The operating budget for the 2004-2005 fiscal year.
- (2) The operating budget for the 2005-2006 fiscal year.
- (3) The total attendance at the museum during the 2005 calendar year.

**NEW LEASE PURCHASE/INSTALLMENT CONTRACTS FOR FORESTRY EQUIPMENT FOR DIVISION OF FOREST RESOURCES**

**SECTION 12.6.** Prior to the Division of Forest Resources of the Department of Environment and Natural Resources entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment, the Division of Forest Resources shall consult with the Joint Legislative Commission on Governmental Operations. Prior to the Department of Administration entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment on behalf of the Division of Forest Resources, the Department of Administration shall consult with the Joint Legislative Commission on Governmental Operations.

**EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS**

**SECTION 12.7.(a)** Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1 of S.L. 1999-329, Section 5 of S.L. 2001-254, Section 1.1 of S.L. 2002-176, and Section 6.1 of S.L. 2003-340, reads as rewritten:

"(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 November 1997, and to terminate 1 September ~~2005~~, 2007, regarding the annual inspections of animal operations that are

subject to a permit under Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County and Pender County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Article 21 of Chapter 143 of the General Statutes in these ~~three-four~~ counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these ~~three-four~~ counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the ~~three-four~~ counties are used for the quick response to complaints and reported problems previously referred only to the Division of Water Quality of the Department of Environment and Natural Resources."

**SECTION 12.7.(b)** Section 3.3 of S.L. 1999-329, as amended by Section 6 of S.L. 2001-254, Section 1.2 of S.L. 2002-176, and Section 6.2 of S.L. 2003-340, reads as rewritten:

"Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit semiannual interim reports no later than 15 April and 15 October of each year beginning 15 October 1999 ~~and shall submit a final report no later than 15 October 2005~~ to the ~~Environmental Review Commission and to Commission,~~ the Fiscal Research Division, Division, and the Appropriations Subcommittees on Natural and Economic Resources in both the Senate and the House of Representatives. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. These reports shall also compare the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections pursuant to G.S. 143-215.10D and G.S. 143-215.10F and the resources that would be required to expand the pilot program to all counties. ~~The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals.~~"

**SECTION 12.7.(c)** No later than October 15, 2005, the Department of Environment and Natural Resources shall recommend to the Environmental Review Commission and the General Assembly whether to continue or expand the pilot program under this section. The Environmental Review Commission shall recommend to the 2006 Session of the General Assembly whether to continue or expand the pilot program under this section and may make any related legislative proposals.

#### **BEAVER DAMAGE CONTROL PROGRAM FUNDS**

**SECTION 12.8.** Of the funds appropriated in this act to the Department of Environment and Natural Resources, the sum of three hundred forty-nine thousand dollars (\$349,000) for the 2005-2006 fiscal year and the sum of three hundred forty-nine thousand dollars (\$349,000) for the 2006-2007 fiscal year shall be allocated to the Wildlife Resources Commission to be used to provide the State share necessary to support the beaver damage control program established in G.S. 113-291.10, provided the sum of at least twenty-five thousand dollars (\$25,000) in federal funds is available each fiscal year of the biennium to provide the federal share.

#### **MONITORING AND EMERGENCY CLEANUP FUNDS FOR TEXFI SITE CONTAMINATION**

**SECTION 12.9.** Of the funds appropriated to the Department of Environment and Natural Resources, Division of Waste Management, for the 2005-2006 fiscal year to cost share federal funds for the cleanup of Superfund sites, up to fifty thousand dollars (\$50,000) may be used by the Department of Environment and Natural Resources, Division of Waste Management, for the 2005-2006 fiscal year for monitoring the groundwater and other contamination located at the Texfi site in Fayetteville and for any emergency cleanup activities needed at this site.

#### **USE OF NORTH CAROLINA AQUARIUMS FUND FOR DEBT SERVICE OF AQUARIUM EXPANSIONS**

**SECTION 12.10.** G.S. 143B-289.44(b) reads as rewritten:

"(b) Fund. – The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used for repair, renovation, expansion, maintenance, educational exhibit construction, and operational expenses at existing ~~aquariums~~ aquariums, to pay the debt service and lease payments related to the financing of expansions of aquariums, including other relevant satellite areas, and to match private funds that are raised for these purposes."

### **PART XIII. DEPARTMENT OF COMMERCE**

#### **WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS**

**SECTION 13.1.(a)** Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005, but shall remain available to the Department to be expended by the Wanchese



Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes.

**SECTION 13.1.(b)** Funds appropriated to the Department of Commerce for the 2004-2005 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2005, shall not revert to the General Fund on June 30, 2005.

**SECTION 13.1.(c)** This section becomes effective June 30, 2005.

## **COUNCIL OF GOVERNMENT FUNDS**

**SECTION 13.2.(a)** Of the funds appropriated in this act to the Department of Commerce, eight hundred thirty-two thousand one hundred fifty dollars (\$832,150) for the 2005-2006 fiscal year and eight hundred thirty-two thousand one hundred fifty dollars (\$832,150) for the 2006-2007 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to forty-eight thousand nine hundred fifty dollars (\$48,950) for the 2005-2006 and the 2006-2007 fiscal years.

**SECTION 13.2.(b)** A regional council of government may use funds appropriated by this section only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

**SECTION 13.2.(c)** Funds appropriated by this section shall be paid by electronic transfer in two equal installments, the first no later than September 1, 2005, and the second subsequent to acceptable submission of the annual report due to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006, as specified in subdivision (e)(2) of this section.

**SECTION 13.2.(d)** Funds appropriated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

**SECTION 13.2.(e)** Each council of government or lead regional organization shall do the following:

- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
  - d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.

- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.
- (3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

## **TOURISM PROMOTION GRANTS**

**SECTION 13.3.(a)** Tourism promotion funds appropriated to the Department of Commerce shall be allocated to counties based on need. Determination of counties that are most in need of State assistance shall be made in accordance with the existing State tier formula provided in G.S. 105-129.3.

**SECTION 13.3.(b)** Funds appropriated in this act to the Department of Commerce for tourism promotion grants shall be allocated according to the economic development tier assigned by the Department of Commerce in the following manner:

- (1) Eligible organizations in counties with a Tier 1 or 2 designation are each eligible to receive a maximum grant of seven thousand five hundred dollars (\$7,500) for each fiscal year, provided these funds are matched on the basis of one non-State dollar (\$1.00) for every four State dollars (\$4.00).
- (2) Eligible organizations in counties with a Tier 3 or 4 designation are each eligible to receive a maximum grant of three thousand five hundred dollars (\$3,500) for two of the next three fiscal years, provided these funds are matched on the basis of one non-State dollar (\$1.00) for every three State dollars (\$3.00).
- (3) Eligible organizations in counties with a Tier 5 designation are each eligible to receive a maximum grant of three thousand five hundred dollars (\$3,500) in alternating fiscal years provided these funds are matched on the basis of two non-State dollars (\$2.00) for every one State dollar (\$1.00).

**SECTION 13.3.(c)** An eligible organization that applies for but does not receive tourism promotion grant funds may apply for and be awarded funds in the following fiscal year. The fact that one or more eligible organizations in a county are awarded tourism promotion grant funds in a given fiscal year shall not bar other eligible

organizations in that county from applying for and being awarded funds in the next fiscal year.

## **EMPLOYMENT SECURITY FUNDS**

**SECTION 13.4.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve shall not exceed the total administrative costs paid in fiscal year 2004-2005.

**SECTION 13.4.(b)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of six million three hundred thousand dollars (\$6,300,000) for the 2005-2006 fiscal year to be used for the following purposes:

- (1) Six million dollars (\$6,000,000) for the operation and support of local offices.
- (2) Two hundred thousand dollars (\$200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.
- (3) One hundred thousand dollars (\$100,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

## **TRADE JOBS FOR SUCCESS REPORTING**

**SECTION 13.4A.(a)** In addition to the statutory reporting requirements pursuant to G.S. 143B-438.17, the Employment Security Commission, Department of Commerce, and the Community Colleges System Office shall make a joint written progress report on their compliance with Section 13.7A of S.L. 2004-124, as to the following:

- (1) The actions taken to obtain from the U.S. Department of Labor as quickly as possible a waiver under the Trade Adjustment Act to allow the Trade Jobs for Success initiative to (i) serve persons regardless of their age, (ii) use unemployment funds to provide direct monetary incentives to participating employers and direct income to eligible workers in the retraining program, and (iii) use funds for in-State relocation assistance.
- (2) Whether waivers have been sought for other program components.
- (3) The progress made in implementing the Trade Jobs for Success initiative in the counties hardest hit by trade-impacted job losses, particularly the counties having an unemployment rate of eight percent

(8%) and the extent to which these counties have received priority consideration.

- (4) The efforts of the Department of Commerce seeking and receiving private grants and federal funds for the Trade Jobs for Success initiative.
- (5) Any reasons why legislative mandates have not been followed or the statutory goals have not been achieved.

The progress report shall be submitted to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and the House of Representatives by August 1, 2005.

**SECTION 13.4A.(b)** G.S. 143B-438.17 reads as rewritten:

**"§ 143B-438.17. Reporting.**

(a) Beginning July 1, 2005, The the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly-monthly written report on the Trade Jobs for Success (TJS) initiative. The monthly report shall provide information on the commitment, disbursement, and use of funds and the status of any grant proposals or waivers requested on behalf of the Trade Jobs for Success initiative. The monthly report shall be submitted to the Governor and to the Fiscal Research Division of the General Assembly.

(b) Beginning October 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly written report on the Trade Jobs for Success initiative. The quarterly report shall also include legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the quarterly report shall be provided to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly.

(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."

**INDUSTRIAL DEVELOPMENT FUND**

**SECTION 13.5.** G.S. 143B-437.01 reads as rewritten:

**"§ 143B-437.01. Industrial Development Fund.**

(a) **Creation and Purpose of Fund.** – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for

the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

- ...
- (1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, ~~or electrical utility distribution lines or equipment~~equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, ~~or electrical utility lines or facilities~~facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

...

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one, two, and three areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, ~~or electrical utility distribution lines or equipment~~equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, ~~or electrical utility lines or facilities~~facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

...."

## **ONE NORTH CAROLINA FUND**

**SECTION 13.6.(a)** Of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce may use up to three hundred thousand dollars (\$300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs in the 2005-2006 fiscal year.

**SECTION 13.6.(b)** Notwithstanding the provisions of G.S. 143B-437.71, of the funds appropriated in this act to the One North Carolina Fund, the Department of Commerce shall allocate one million dollars (\$1,000,000) for the 2005-2006 fiscal year

to Johnson and Wales University in Charlotte for the purpose of providing financial assistance to the University.

### **STUDY ALTERNATE FUNDING OF INDUSTRIAL COMMISSION**

**SECTION 13.6A.** The Department of Commerce and the Industrial Commission shall jointly conduct a study to determine the feasibility of terminating General Fund support for the Industrial Commission and providing for the costs of the Commission's operations and personnel by increasing the Commission's existing fees or establishing new fees. The Department and Commission shall report the results of its study and make recommendations for alternate ways of funding the Commission to the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Office of State Budget and Management, and the Fiscal Research Division no later than April 1, 2006.

### **ROANOKE RAPIDS MUSIC/ENTERTAINMENT COMPLEX**

**SECTION 13.6B.** There is appropriated from the General Fund to the Department of Commerce the sum of five hundred thousand dollars (\$500,000) for the 2005-2006 fiscal year to be allocated to the Roanoke Rapids Entertainment District for the construction of a music and entertainment complex in Roanoke Rapids. The Department of Commerce shall not release funds appropriated in this section until the Office of State Budget and Management has determined that the Roanoke Rapids Entertainment District has entered into the contracts necessary for the successful completion of the complex. Beginning September 1, 2005, and quarterly thereafter, the Roanoke Rapids Entertainment District shall report its progress in completing the complex and the total funds received to date to the Office of State Budget and Management, the Department of Commerce, and the Fiscal Research Division.

### **REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS/VISION PLANS**

**SECTION 13.6C.** There is appropriated from the General Fund to the Department of Commerce the sum of one million seven hundred fifty thousand dollars (\$1,750,000) for the 2005-2006 fiscal year to be allocated to the seven regional economic development commissions. Of these funds, each regional economic development commission shall receive two hundred fifty thousand dollars (\$250,000). These funds shall be used by each commission to develop and implement a strategic economic development plan as provided in Section 13.6 of S.L. 2004-124.

### **REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS**

**SECTION 13.7.(a)** Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following Commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Commission, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional

Economic Development Commission, Global TransPark Development Commission, and Carolinas Partnership, Inc.

**SECTION 13.7.(b)** Funds appropriated pursuant to subsection (a) of this section shall be allocated to each Regional Economic Development Commission as follows:

- (1) First, the Department shall establish each Commission's allocation by determining the sum of allocations to each county that is a member of that Commission. Each county's allocation shall be determined by dividing the county's enterprise factor by the sum of the enterprise factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "enterprise factor" means a county's enterprise factor as calculated under G.S. 105-129.3; and
- (2) Next, the Department shall subtract from funds allocated to the Global TransPark Development Commission the sum of one hundred eighteen thousand one hundred twenty-nine dollars (\$118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars (\$118,477) in the 2006-2007 fiscal year, which sum represents the interest earnings in each fiscal year on the estimated balance of seven million five hundred thousand dollars (\$7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and
- (3) Next, the Department shall redistribute the sum of one hundred eighteen thousand one hundred twenty-nine dollars (\$118,129) in the 2005-2006 fiscal year and one hundred eighteen thousand four hundred seventy-seven dollars (\$118,477) in the 2006-2007 fiscal year to the seven Regional Economic Development Commissions named in subsection (a) of this section. Each Commission's share of this redistribution shall be determined according to the enterprise factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each Commission's allocation determined under subdivision (1) of this subsection.

## **REGIONAL ECONOMIC DEVELOPMENT COMMISSION REPORTS**

**SECTION 13.8.(a)** By February 15 of each fiscal year, the seven regional economic development commissions shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:

- (1) The preceding fiscal year's program activities, objectives, and accomplishments.
- (2) The preceding fiscal year's itemized expenditures and fund sources.
- (3) Demonstration of how the commission's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.

- (4) To the extent they are involved in promotion activities such as trade shows, visits to prospects and consultants, advertising and media placement, the commissions shall demonstrate how they have generated qualified leads.

**SECTION 13.8.(b)** Each of the commissions shall provide to the Fiscal Research Division a copy of their annual audited financial statement within 30 days of issuance of the statement.

**SECTION 13.8.(c)** The reporting requirements for regional economic development commissions, as provided in subsection (a) of this section, shall be reviewed annually by the North Carolina Partnership for Economic Development, and recommendations for changes to the reporting requirements shall be made to the Fiscal Research Division, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

**SECTION 13.8.(d)** Regional economic development commissions shall receive quarterly allocations of the funds appropriated in this act to the Department of Commerce for regional economic development commissions.

**SECTION 13.8.(e)** Regional economic development commissions shall remain in the Department of Commerce's Budget Code 14601 with other State-aided nonprofit entities.

#### **ADVANCED VEHICLE RESEARCH CENTER/RESERVE FUNDS**

**SECTION 13.8A.(a)** There is established in the Office of the State Budget and Management a reserve to be known as the Advanced Vehicle Research Center Reserve. Funds from the Reserve shall not be expended or transferred except in accordance with the provisions of this section.

**SECTION 13.8A.(b)** Of the funds appropriated by this act to the Advanced Vehicle Research Center Reserve, the Office of State Budget and Management may transfer in up to four installments the sum of seven million five hundred thousand dollars (\$7,500,000) for the 2005-2006 fiscal year to the Department of Commerce to be allocated to the Advanced Vehicle Research Center of North Carolina, Inc., (Center) when the Office of State Budget and Management, in consultation with the Department of Commerce, determines the Center has completed goals and projects consistent with the Center's business plan. The goals and projects shall include the following:

- (1) The Center has obtained legal title to the property on which the Advanced Vehicle Research Center will be built.
- (2) The Center has determined and provided for the critical infrastructure needed to support the Advanced Vehicle Research Center.
- (3) The Center has entered into a contract for the use and operation of a testing facility that will create new private sector jobs in Tier 1 or Tier 2 counties.

**SECTION 13.8A.(c)** The Center shall file with the Office of State Budget and Management and the Department of Commerce a copy of the Center's policy addressing conflicts of interest that may arise involving the Center's management employees and the members of its board of directors or other governing body before



funds may be allocated to the Center. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Center's employees or members of the board or other governing body, from the Center's disbursing of State funds, and shall include actions to be taken by the entity or the individual, or both, to avoid conflicts of interest and the appearance of impropriety.

**SECTION 13.8A.(d)** By December 31, 2005, and April 30, 2006, the Center shall report to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division the following information: (i) fiscal year 2005-2006 projects, objectives, and accomplishments; and (ii) fiscal year 2005-2006 itemized expenditures and fund sources. The April 30, 2006, report shall also contain the following: (i) fiscal year 2006-2007 planned projects, objectives, and accomplishments; and (ii) fiscal year 2006-2007 estimated expenditures and fund sources.

**SECTION 13.8A.(e)** The Center shall provide to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division: (i) a copy of the Center's annual audited financial statement within 30 days of issuance of the statement; and (ii) a copy of the Center's IRS Form 990.

**SECTION 13.8A.(f)** The Center shall provide a report containing detailed budget information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests. Specific salary information will be provided upon written request by the Chairmen of the Joint Legislative Commission on Governmental Operations or the Chairmen of the House Appropriations Committee on Environment, Health, and Natural Resources and the Chairman of the Senate Appropriations Committee on Natural and Economic Resources.

## **NONPROFIT REPORTING REQUIREMENTS**

**SECTION 13.9.(a)** The N.C. Institute for Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., Coalition of Farm and Rural Families, and Partnership for the Sounds, Inc., shall do the following:

- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments including actual results through December 31, 2005; and

- d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2005.
- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
- a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources including actual expenditures and fund sources through December 31, 2006.
- (3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

**SECTION 13.9.(b)** No funds appropriated under this act shall be released to a nonprofit organization listed in subsection (a) of this section until the organization has satisfied the reporting requirement for January 15, 2005. Fourth quarter allotments shall not be released to any nonprofit organization that does not satisfy the reporting requirements by January 15, 2006, or January 15, 2007.

## **BIOTECHNOLOGY CENTER**

**SECTION 13.10.(a)** The North Carolina Biotechnology Center shall recapture funds spent in support of successful research and development efforts in the for-profit private sector.

**SECTION 13.10.(b)** The North Carolina Biotechnology Center shall provide funding for biotechnology, biomedical, and related bioscience applications under its Business and Science Technology Programs.

**SECTION 13.10.(c)** The North Carolina Biotechnology Center shall:

- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and

- d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.
- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.
- (3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

**SECTION 13.10.(d)** The North Carolina Biotechnology Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management and to the Fiscal Research Division in the same manner as State departments and agencies in preparation for biennium budget requests.

**RURAL ECONOMIC DEVELOPMENT CENTER**

**SECTION 13.11.(a)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million two hundred fifty thousand six hundred ninety-seven dollars (\$2,250,697) for the 2005-2006 fiscal year and the sum of two million twenty-five thousand six hundred ninety-seven dollars (\$2,025,697) for the 2006-2007 fiscal year shall be allocated as follows:

	2005-2006	2006-2007
Research and Demonstration Grants	\$370,000	\$370,000
Technical Assistance and Center Administration of Research and Demonstration Grants	444,399	444,399
Center Administration, Oversight, and Other Programs	604,298	604,298
Administration of Clean Water/ Natural Gas Critical Needs Bond Act of 1998	199,722	199,722
Additional Administration of Supplemental Funding Program	363,278	138,278
Administration of Capacity Building Assistance Program (1998 Bond Act)	125,000	125,000

Institute for Rural Entrepreneurship 144,000 144,000.

**SECTION 13.11.(b)** Of the funds allocated for Additional Administration of Supplemental Funding Program for fiscal year 2005-2006 in subsection (a) of this section, the sum of seventy-five thousand dollars (\$75,000) may be allocated to Pitt County, the sum of seventy-five thousand dollars (\$75,000) to Martin County, and the sum of seventy-five thousand dollars (\$75,000) to Hertford County for the purpose of water or wastewater projects.

**SECTION 13.11.(c)** The Rural Economic Development Center, Inc., shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

**SECTION 13.11.(d)** For purposes of this section, the term "community development corporation" means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

**SECTION 13.11.(e)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of two million six hundred sixty-five thousand nine hundred ten dollars (\$2,665,910) for the 2005-2006 fiscal year and the sum of two million six hundred sixty-five thousand nine hundred ten dollars (\$2,665,910) for the 2006-2007 fiscal year shall be allocated as follows:

- (1) \$1,297,410 in each fiscal year for community development grants to support development projects and activities within the State's minority communities. Any new or previously funded community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center, Inc., shall establish performance-based criteria for determining which community development corporation will receive a grant and the grant amount. The Rural Economic Development Center, Inc., shall allocate these funds as follows:
  - a. \$1,247,410 for direct grants to local community development corporations to support operations and project activities.

- b. \$50,000 in each fiscal year to the Rural Economic Development Center, Inc., to be used to cover expenses in administering this section.
- (2) \$195,000 in each fiscal year to the Microenterprise Loan Program to support the loan fund and operations of the Program; and
- (3) \$983,000 in each fiscal year shall be used for a program to provide supplemental funding for matching requirements for projects and activities authorized under this subsection. The Center shall allocate these funds as follows:
  - a. \$675,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for:
    - 1. Necessary economic development projects and activities in economically distressed areas;
    - 2. Necessary water and sewer projects and activities in economically distressed communities to address health or environmental quality problems except that funds shall not be expended for the repair or replacement of low-pressure-pipe wastewater systems. If a grant is awarded under this sub-subdivision, then the grant shall be matched on a dollar-for-dollar basis in the amount of the grant awarded; or
    - 3. Projects that demonstrate alternative water and waste management processes for local governments. Special consideration should be given to cost-effectiveness, efficacy, management efficiency, and the ability of the demonstration project to be replicated.
  - b. \$208,000 in each fiscal year to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants related to water, sewer, or business development projects.
  - c. \$100,000 in each fiscal year to support the update of the statewide water and sewer database and to support the development of a statewide water management plan.
- (4) \$190,500 in each fiscal year for the Agricultural Advancement Consortium. These funds shall be placed in a reserve and allocated as follows:
  - a. \$75,000 in each fiscal year for operating expenses associated with the Consortium; and
  - b. \$115,500 in each fiscal year for research initiatives funded by the Consortium.

The Consortium shall facilitate discussions among interested parties and shall develop recommendations to improve the State's economic development through farming and agricultural interests.

The grant recipients in this subsection shall be selected on the basis of need.

**SECTION 13.11.(f)** The Rural Economic Development Center, Inc., shall:

- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
  - d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.
- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.
- (3) Provide to the Fiscal Research Division a copy of each grant recipient's annual audited financial statement within 30 days of issuance of the statement.

**SECTION 13.11.(g)** No funds appropriated under this act shall be released to a community development corporation, as defined in this section, unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

## **RURAL ECONOMIC DEVELOPMENT CENTER**

**SECTION 13.12.(a)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of twenty million dollars (\$20,000,000) for the 2005-2006 fiscal year and the sum of twenty million dollars (\$20,000,000) for the 2006-2007 fiscal year shall be allocated as follows:

- (1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct

critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars (\$15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.

(2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.

(3) To provide economic development research and demonstration grants.

**SECTION 13.12.(b)** The funds appropriated in this act to the Rural Economic Development Center, Inc., shall be recurring funds.

**SECTION 13.12.(c)** The Rural Economic Development Center, Inc., may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

**SECTION 13.12.(d)** During each year of the 2005-2007 biennium, the Rural Economic Development Center, Inc., may use up to two percent (2%) of the funds appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

**SECTION 13.12.(e)** No later than January 15 each year, the Rural Economic Development Center, Inc., shall submit an annual report to the Joint Legislative Commission on Governmental Operations concerning the progress of the North Carolina Economic Infrastructure Program.

**SECTION 13.12.(f)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., and allocated in subsection (a) of this section, the sum of five hundred thousand dollars (\$500,000) for the 2005-2006 fiscal year and the sum of five hundred thousand dollars (\$500,000) for the 2006-2007 fiscal year shall be allocated to the e-NC Authority.

The e-NC Authority may contract with other State agencies, The University of North Carolina, the North Carolina Community College System, and nonprofit organizations to assist with program development and the evaluation of program activities.

The e-NC Authority shall report to the 2006 General Assembly on the following:

- (1) The activities necessary to be undertaken in distressed urban areas of the State to enhance the capability of citizens and businesses residing in these areas to access the high-speed Internet.
- (2) An implementation plan for the training of citizens and businesses in distressed urban areas.
- (3) The technology and digital literacy training necessary to assist citizens and existing businesses to create new technology-based enterprises in

these communities and to use the Internet to enhance the productivity of their businesses.

The e-NC Authority shall, by January 31, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities.

**SECTION 13.12.(g)** G.S.143B-437.46(b) reads as rewritten:

"(b) Commission. – The Authority shall be governed by a Commission. The Commission shall consist of ~~nine voting members and six non-voting ex-officio~~ 15 voting members, as follows:

- (1) Three members appointed by the Governor.
- (2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (3) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) Six ~~ex-officio, non-voting ex-officio~~ members to include the Secretary of Commerce, the State Chief Information Officer, the President of the North Carolina Rural Economic Development Center, Inc., the Executive Director of the North Carolina Justice and Community Development Center, the Executive Director of the North Carolina League of Municipalities, the Executive Director of the North Carolina Association of County Commissioners, or their designees.

It is the intent of the General Assembly that the appointing authorities, in making appointments, shall consider members who represent the geographic, gender, and racial diversity of the State, members who represent rural counties, members who represent distressed urban areas, members who represent the regional partnerships, and members who represent the communications industry. For the purpose of this subsection, the term "communications industry" includes local telephone exchange companies, rural telephone cooperatives, Internet service providers, commercial wireless communications carriers, cable television companies, satellite companies, and other communications businesses."

## **OPPORTUNITIES INDUSTRIALIZATION CENTER FUNDS**

**SECTION 13.13.(a)** Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of three hundred sixty-one thousand dollars (\$361,000) for the 2005-2006 fiscal year and the sum of three hundred sixty-one thousand dollars (\$361,000) for the 2006-2007 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers for ongoing job training programs.

**SECTION 13.13.(b)** For each of the Opportunities Industrialization Centers receiving funds pursuant to subsection (a) of this section, the Rural Economic Development Center, Inc., shall:



- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
  - d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.
- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.
- (3) Notwithstanding G.S. 143-6.1(d), file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statements must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.
- (4) Provide to the Fiscal Research Division a copy of the annual audited financial statement required in subdivision (3) of this subsection within 30 days of issuance of the statement.

**SECTION 13.13.(c)** No funds appropriated under this act shall be released to an Opportunities Industrialization Center (hereinafter Center) listed in subsection (a) of this section if the Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

## **ONE NORTH CAROLINA SMALL BUSINESS PROGRAM**

**SECTION 13.14(a)** G.S. 143B-437.71 reads as rewritten:

**"§ 143B-437.71. One North Carolina Fund established as a nonreverting account.**

(a) Establishment. – The One North Carolina Fund is established as a special revenue fund in the Department of Commerce.

(b) Purposes. – Moneys in the One North Carolina Fund may only be allocated pursuant to this subsection. ~~only~~ Moneys may be allocated to local governments for use in connection with securing commitments for the recruitment, expansion, or retention of new and existing businesses. ~~businesses and to the One North Carolina Small Business Account created pursuant to subsection (c) of this section in an amount not to exceed three million dollars (\$3,000,000). Moneys in the One North Carolina Fund allocated to local governments shall be used for the following purposes only:~~

- (1) Installation or purchase of equipment.
- (2) Structural repairs, improvements, or renovations to existing buildings to be used for expansion.
- (3) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for existing buildings.
- (4) Construction of or improvements to new or existing water, sewer, gas, or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations.
- (5) Any other purposes specifically provided by an act of the General Assembly.

(c) There is created in the One North Carolina Fund a special account, the One North Carolina Small Business Account, to be used for the North Carolina SBIR/STTR Incentive Program and the North Carolina SBIR/STTR Matching Funds Program, as specified in Part 2I of Article 10 of Chapter 143B of the General Statutes."

**SECTION 13.14.(b)** Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2I. One North Carolina Small Business Program.

**"§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of Science and Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

- (1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.
- (2) The business must have submitted a qualified SBIR/STTR Phase I proposal to a participating federal agency in response to a specific federal solicitation.
- (3) The business must satisfy all federal SBIR/STTR requirements.
- (4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.

- (5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase I proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase I project.
- (6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase I proposal.

(c) Grant. – The North Carolina Board of Science and Technology may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars (\$3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

- (1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.
- (2) An acknowledgement of receipt of the Phase I proposal by the relevant federal agency.
- (3) An itemized statement of the costs that may be reimbursed.
- (4) Any other information necessary for the Board to evaluate the application.

**"§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of Science and Technology. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

(b) Eligibility. – In order to be eligible for a grant under this section, a business must satisfy all of the following conditions:

- (1) The business must be a for-profit, North Carolina-based business. For the purposes of this section, a North Carolina-based business is one that has its principal place of business in this State.
- (2) The business must have received a SBIR/STTR Phase I award from a participating federal agency in response to a specific federal

solicitation. To receive the full match, the business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has interest in the Phase II proposal, and submitted a Phase II proposal to the agency.

- (3) The business must satisfy all federal SBIR/STTR requirements.
- (4) The business shall not receive concurrent funding support from other sources that duplicates the purpose of this section.
- (5) The business must certify that at least fifty-one percent (51%) of the research described in the federal SBIR/STTR Phase II proposal will be conducted in this State and that the business will remain a North Carolina-based business for the duration of the SBIR/STTR Phase II project.
- (6) The business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

(c) Grant. – The North Carolina Board of Science and Technology may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars (\$100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of Science and Technology for a grant under this section on a form prescribed by the Board that includes at least all of the following:

- (1) The name of the business, the form of business organization under which it is operated, and the names and addresses of the principals or management of the business.
- (2) An acknowledgement of receipt of the Phase I report and Phase II proposal by the relevant federal agency.
- (3) Any other information necessary for the Board to evaluate the application.

**"§ 143B-437.82. Program guidelines.**

The Department of Commerce shall develop guidelines related to the administration of the One North Carolina Small Business Program. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the Department of Commerce must publish the proposed guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the Department must accept oral and written comments on the proposed guidelines during the 15 business days beginning on the first day that the

Department has completed these notifications. For the purpose of this section, a technical amendment is either of the following:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

**"§ 143B-437.83. Reports.**

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account at the end of each fiscal quarter. The report shall contain information on the disbursement and use of funds allocated under the One North Carolina Small Business Program. The report is due no later than one month after the end of the fiscal quarter and must be submitted to the following:

- (1) The Joint Legislative Commission on Governmental Operations.
- (2) The chairs of the House of Representatives and Senate Finance Committees.
- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly."

**PART XIV. JUDICIAL DEPARTMENT**

**DIVIDE DISTRICT COURT DISTRICT 20 AND PROSECUTORIAL DISTRICT 20 INTO 20A AND 20B AND REALIGN SUPERIOR COURT DISTRICTS 20A AND 20B/ESTABLISH ADDITIONAL SUPERIOR COURT JUDGESHIP FOR DISTRICT 20B EFFECTIVE JANUARY 1, 2011/DIVIDE SUPERIOR COURT, DISTRICT COURT, AND PROSECUTORIAL DISTRICTS 29 INTO DISTRICTS 29A AND 29B**

**SECTION 14.2.(a)** G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3

Second	4A	Duplin, Jones, Sampson	1 1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2
Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1

Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, <u>Richmond</u> <u>Richmond Stanly</u>	1 2
Sixth	20B	<del>Stanly</del> , Union	2 1
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2
Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg,	3

		see subsection (b))	
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29	<del>Henderson, McDowell, Polk, Rutherford, Transylvania</del>	<del>2</del>
	29A	<u>McDowell, Rutherford</u>	<u>1</u>
<u>Eighth</u>	<u>29B</u>	<u>Henderson, Polk, Transylvania</u>	<u>1</u>
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1."

**SECTION 14.2.(b)** The superior court judgeship transferred from District 20B to 20A by subsection (a) of this section shall be filled by the judge currently serving District 20B who resides in Stanly County. That judge's current term expires on December 31, 2006. No election shall be held in 2006 for that judge's seat, and that judge shall serve until a successor is elected in the 2008 general election, in order to provide for unstagged terms for multiple judgeships in the same district.

**SECTION 14.2.(c)** The superior court judgeship for District 29A under subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Rutherford County. That judge's term expires on December 31, 2012, and a successor shall be elected in the 2012 general election.

**SECTION 14.2.(d)** The superior court judgeship for District 29B under subsection (a) of this section shall be filled by the superior court judge from current District 29 who resides in Henderson County. That judge's term expires on December 31, 2006, and a successor shall be elected in the 2006 general election.

**SECTION 14.2.(e)** The trial court administrator serving current District 29 shall serve as trial court administrator for both District 29A and District 29B.

**SECTION 14.2.(e1)** Effective January 1, 2011, G.S. 7A-41(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
First	2	Beaufort, Hyde,	1



		Martin, Tyrrell, Washington	
First	3A	Pitt	2
Second	3B	Carteret, Craven, Pamlico	3
Second	4A	Duplin, Jones, Sampson	1 1
Second	4B	Onslow	1
Second	5A	(part of New Hanover, part of Pender see subsection (b))	1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover, see subsection (b))	1
First	6A	Halifax	1
First	6B	Bertie, Hertford, Northampton	1
First	7A	Nash	1
First	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
First	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
Second	8A	Lenoir and Greene	1
Second	8B	Wayne	1
Third	9	Franklin, Granville, Vance, Warren	2
Third	9A	Person, Caswell	1
Third	10A	(part of Wake, see subsection (b))	2
Third	10B	(part of Wake, see subsection (b))	2
Third	10C	(part of Wake, see subsection (b))	1
Third	10D	(part of Wake, see subsection (b))	1
Fourth	11A	Harnett, Lee	1
Fourth	11B	Johnston	1
Fourth	12A	(part of Cumberland, see subsection (b))	1
Fourth	12B	(part of Cumberland, see subsection (b))	1
Fourth	12C	(part of Cumberland, see subsection (b))	2

Fourth	13	Bladen, Brunswick, Columbus	2
Third	14A	(part of Durham, see subsection (b))	1
Third	14B	(part of Durham, see subsection (b))	3
Third	15A	Alamance	2
Third	15B	Orange, Chatham	2
Fourth	16A	Scotland, Hoke	1
Fourth	16B	Robeson	2
Fifth	17A	Rockingham	2
Fifth	17B	Stokes, Surry	2
Fifth	18A	(part of Guilford, see subsection (b))	1
Fifth	18B	(part of Guilford, see subsection (b))	1
Fifth	18C	(part of Guilford, see subsection (b))	1
Fifth	18D	(part of Guilford, see subsection (b))	1
Fifth	18E	(part of Guilford, see subsection (b))	1
Sixth	19A	Cabarrus	1
Fifth	19B	Montgomery, Randolph	1
Sixth	19C	Rowan	1
Fifth	19D	Moore	1
Sixth	20A	Anson, Richmond Stanly	2
Sixth	20B	Union	4 <u>2</u>
Fifth	21A	(part of Forsyth, see subsection (b))	1
Fifth	21B	(part of Forsyth, see subsection (b))	1
Fifth	21C	(part of Forsyth, see subsection (b))	1
Fifth	21D	(part of Forsyth, see subsection (b))	1
Sixth	22	Alexander, Davidson, Davie, Iredell	3
Fifth	23	Alleghany, Ashe, Wilkes, Yadkin	1
Eighth	24	Avery, Madison, Mitchell, Watauga, Yancey	2
Seventh	25A	Burke, Caldwell	2

Seventh	25B	Catawba	2
Seventh	26A	(part of Mecklenburg, see subsection (b))	2
Seventh	26B	(part of Mecklenburg, see subsection (b))	3
Seventh	26C	(part of Mecklenburg, see subsection (b))	2
Seventh	27A	Gaston	2
Seventh	27B	Cleveland, Lincoln	2
Eighth	28	Buncombe	2
Eighth	29A	McDowell, Rutherford	1
Eighth	29B	Henderson, Polk, Transylvania	1
Eighth	30A	Cherokee, Clay, Graham, Macon, Swain	1
Eighth	30B	Haywood, Jackson	1."

**SECTION 14.2.(e2)** The superior court judgeship established for District 20B by subsection (e1) of this section effective January 1, 2011, shall be filled by election in the 2010 general election. No election shall be held in 2006 for the seat of the judge currently serving District 20B and residing in Union County, and that judge shall serve until a successor is elected in the 2010 general election, in order to provide for unstagged terms for multiple judgeships in the same district.

**SECTION 14.2.(f)** G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	5	Camden Chowan Currituck Dare Gates Pasquotank Perquimans
2	4	Martin Beaufort Tyrrell Hyde Washington
3A	5	Pitt
3B	5	Craven Pamlico
4	8	Carteret Sampson Duplin Jones

5	8	Onslow New Hanover
6A	2	Pender Halifax
6B	3	Northampton Bertie Hertford
7	7	Nash Edgecombe Wilson
8	6	Wayne Greene Lenoir
9	4	Granville (part of Vance see subsection (b)) Franklin
9A	2	Person Caswell
9B	2	Warren (part of Vance see subsection (b))
10	15	Wake
11	8	Harnett Johnston Lee
12	9	Cumberland
13	6	Bladen Brunswick Columbus
14	6	Durham
15A	4	Alamance
15B	4	Orange Chatham
16A	3	Scotland Hoke
16B	5	Robeson
17A	2	Rockingham
17B	4	Stokes Surry
18	12	Guilford
19A	4	Cabarrus
19B	6	Montgomery Moore

19C	4	Randolph
<del>20</del> <u>20A</u>	<del>7</del> <u>4</u>	Rowan
		Stanly
		<del>Union</del>
		Anson
		Richmond
<u>20B</u>	<u>3</u>	<u>Union</u>
21	9	Forsyth
22	9	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	8	Burke
		Caldwell
		Catawba
26	17	Mecklenburg
27A	6	Gaston
27B	4	Cleveland
		Lincoln
28	6	Buncombe
<del>29</del>	<del>7</del>	<del>Henderson</del>
		<del>McDowell</del>
		<del>Polk</del>
		<del>Rutherford</del>
		<del>Transylvania</del>
<u>29A</u>	<u>3</u>	<u>McDowell</u>
		<u>Rutherford</u>
<u>29B</u>	<u>4</u>	<u>Henderson</u>
		<u>Polk</u>
		<u>Transylvania</u>
30	5	Cherokee
		Clay
		Graham
		Haywood
		Jackson

Macon  
Swain."

**SECTION 14.2.(g)** The four district court judgeships for District 20A under subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Anson, Stanly, and Richmond Counties. The term of the judge living in Anson County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election. The term of the judge living in Stanly County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of one of the judges living in Richmond County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election. The term of the other judge living in Richmond County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 election.

**SECTION 14.2.(h)** The three district court judgeships for District 20B under subsection (f) of this section shall be filled by the district court judges from current District 20 who reside in Union County. The terms of the three judges living in Union County expire the first Monday in December 2008. Those judges' successors shall be elected in the 2008 election.

**SECTION 14.2.(i)** The three district court judgeships for District 29A under subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in McDowell and Rutherford Counties and by the judge established for District 29 to be appointed by the Governor pursuant to Section 14.6 of S.L. 2004-124, as amended by subsection (j) of this section. The term of the judge living in Rutherford County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 general election. The term of the judge living in McDowell County expires the first Monday in December 2006. That judge's successor shall be elected in the 2006 election.

**SECTION 14.2.(j)** Section 14.6(f) of S.L. 2004-124 reads as rewritten:

"**SECTION 14.6.(f)** The Governor shall appoint the additional district court judges for Districts 5, 21, and ~~29~~ 29A authorized by subsection (e) of this section, and those judges' successors shall be elected in the 2006 general election for four-year terms commencing on the first Monday in December 2006.

The district court judge for the additional judgeship in District 17B, as authorized by subsection (e) of this section, shall be elected in the 2004 general election in the same manner as provided for in G.S. 163-329 to serve a four-year term beginning the first Monday in December 2004, and no vacancy exists before that date."

**SECTION 14.2.(k)** The four district court judgeships for District 29B under subsection (f) of this section shall be filled by the district court judges from current District 29 who reside in Henderson and Transylvania Counties. The term of the three judges living in Henderson County expires the first Monday in December 2008. Those judges' successors shall be elected in the 2008 general election. The term of the judge living in Transylvania County expires the first Monday in December 2008. That judge's successor shall be elected in the 2008 general election.

**SECTION 14.2.(l)** G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	10
2	Beaufort, Hyde, Martin, Tyrrell, Washington	6
3A	Pitt	9
3B	Carteret, Craven, Pamlico	10
4	Duplin, Jones, Onslow, Sampson	14
5	New Hanover, Pender	14
6A	Halifax	4
6B	Bertie, Hertford, Northampton	4
7	Edgecombe, Nash, Wilson	16
8	Greene, Lenoir, Wayne	11
9	Franklin, Granville, Vance, Warren	11
9A	Person, Caswell	4
10	Wake	31
11	Harnett, Johnston, Lee	14
12	Cumberland	18
13	Bladen, Brunswick, Columbus	11
14	Durham	13
15A	Alamance	8
15B	Orange, Chatham	7
16A	Scotland, Hoke	5
16B	Robeson	10
17A	Rockingham	5
17B	Stokes, Surry	5
18	Guilford	27
19A	Cabarrus	6
19B	Montgomery, Moore, Randolph	11
19C	Rowan	5
<del>20</del> <u>20A</u>	Anson, Richmond, <del>Stanly, Union</del> <u>Stanly</u>	<del>15</del> <u>8</u>
<u>20B</u>	<u>Union</u>	<u>7</u>
21	Forsyth	17
22	Alexander, Davidson, Davie,	16

	Iredell	
23	Alleghany, Ashe, Wilkes, Yadkin	5
24	Avery, Madison, Mitchell, Watauga, Yancey	4
25	Burke, Caldwell, Catawba	15
26	Mecklenburg	36
27A	Gaston	12
27B	Cleveland, Lincoln	9
28	Buncombe	11
29	<del>Henderson, McDowell, Polk, Rutherford, Transylvania</del>	<del>11</del>
<u>29A</u>	<u>McDowell, Rutherford</u>	<u>5</u>
<u>29B</u>	<u>Henderson, Polk, Transylvania</u>	<u>6</u>
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	9

**SECTION 14.2.(m)** The district attorneys established for Districts 20A, 20B, 29A, and 29B by subsection (l) of this section shall be elected in the 2006 general election.

**SECTION 14.2.(n)** The eight assistant district attorney positions for District 20A under subsection (l) of this section shall be filled by eight assistant district attorneys currently serving Anson, Richmond, and Stanly Counties in District 20. The seven assistant district attorney positions established for District 20B by subsection (l) of this section shall be filled by seven assistant district attorneys currently serving Union County in District 20.

**SECTION 14.2.(o)** The five assistant district attorney positions for District 29A under subsection (l) of this section shall be filled by five assistant district attorneys currently serving McDowell and Rutherford Counties in current District 29. The six district attorney positions for District 29B under subsection (l) of this section shall be filled by six assistant district attorneys currently serving Henderson, Polk, and Transylvania Counties in current District 29.

**SECTION 14.2.(p)** G.S. 7A-69 reads as rewritten:

**"§ 7A-69. Investigatorial assistants.**

The district attorney in prosecutorial districts 1, 3B, 4, 5, 7, 8, 11, 12, 13, 14, 15A, 15B, 16A, 18, 19B, ~~20~~, 20A, 20B, 21, 22, 24, 25, 26, 27A, 27B, 28, ~~29~~, 29A, 29B, and 30 is entitled to one investigatorial assistant, and the district attorney in prosecutorial district 10 is entitled to two investigatorial assistants, to be appointed by the district attorney and to serve at his pleasure.

It shall be the duty of the investigatorial assistant to investigate cases preparatory to trial and to perform such other Duties as may be assigned by the district attorney. The investigatorial assistant is entitled to reimbursement for his subsistence and travel expenses to the same extent as State employees generally."



**SECTION 14.2.(q)** With respect to the realignment of Superior Court Districts 20A and 20B, subsections (a) through (e) of this section become effective December 1, 2005, or the date upon which subsection (a) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the addition of a judge in Superior Court District 20B, subsections (e1) and (e2) of this section become effective January 1, 2011, or the date upon which subsection (e1) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of Superior Court District 29, subsections (a) through (e) of this section become effective December 1, 2005. With respect to the division of District Court District 20, subsections (f) through (k) of this section become effective December 1, 2005, or the date upon which subsection (f) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later. With respect to the division of District Court District 29, subsections (f) through (k) of this section become effective December 1, 2005. With respect to the division of Prosecutorial District 20, subsections (l) through (p) of this section become effective January 1, 2007, or the date upon which subsection (l) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later, but the district attorneys for Prosecutorial Districts 20A and 20B shall be elected in the 2006 general election. With respect to the division of Prosecutorial District 29, subsections (l) through (p) of this section become effective January 1, 2007, but the district attorneys for Prosecutorial Districts 29A and 29B shall be elected in the 2006 general election.

### **COLLECTION OF WORTHLESS CHECK FUNDS**

**SECTION 14.3.** Notwithstanding the provisions of G.S. 7A-308(c) and except as otherwise provided in this act, the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2005, for the purchase or repair of office or information technology equipment during the 2005-2006 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

### **TRANSFER OF EQUIPMENT AND SUPPLY FUNDS**

**SECTION 14.4.** Funds appropriated to the Judicial Department in the 2005-2007 biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

### **STUDY ELECTRONIC PAYMENT**

**SECTION 14.5.** The Judicial Department shall study the feasibility of implementing electronic and online payment options for court fees and other funds

collected by the courts. The study shall address the estimated costs and time frame for implementing electronic payment as well as any necessary legislative changes. The report shall specifically evaluate the feasibility and cost of requiring all court-ordered payments to be entered into the Department's financial management system, and shall provide options for ensuring that this data is entered, including information systems enhancements that will allow fields to be automatically populated from the court information system into the financial management system. The Judicial Department shall report its findings as a result of the study to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

### **GRANT FUNDS**

**SECTION 14.6.** The Judicial Department shall use up to the sum of one million two hundred fifty thousand dollars (\$1,250,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

### **INCREASE CHARGES FOR APPELLATE DIVISION REPORTS TO ACTUAL COST**

**SECTION 14.7.** The Judicial Department shall charge the full cost of production for all copies of the appellate division reports that are sold.

### **NORTH CAROLINA STATE BAR FUNDS**

**SECTION 14.8.** Of the funds appropriated in the continuation budget as a grant-in-aid to the North Carolina State Bar for the 2005-2007 biennium, the North Carolina State Bar may in its discretion use up to the sum of five hundred one thousand five hundred dollars (\$501,500) for the 2005-2006 fiscal year and up to the sum of five hundred one thousand five hundred dollars (\$501,500) for the 2006-2007 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1, 2006, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the activities funded by the grant-in-aid authorized by this section.

### **TRANSFER RESPONSIBILITY FOR PROVIDING LEGAL ASSISTANCE TO INMATES FROM THE DEPARTMENT OF CORRECTION TO THE OFFICE OF INDIGENT DEFENSE SERVICES**

The General Assembly of North Carolina enacts:

**SECTION 14.9.(a)** G.S. 7A-498.3 reads as rewritten:

**"§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.**

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:

- (1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;
- (2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1; ~~and~~
- (2a) Cases in which the State is legally obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction; and
- (3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. The Except in cases under subdivision (2a) of subsection (a) of this section, the court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed as provided in G.S. 7A-452.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office."

**SECTION 14.9.(b)** Effective October 1, 2005, the State's responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts shall be administered by the Office of Indigent Defense Services. The existing contract between the Department of Correction and Prisoner Legal Services, Inc., shall not be extended or renewed beyond that date.

The Director of the Office of Indigent Defense Services shall contract with Prisoner Legal Services, Inc., to provide legal services and access to the courts for inmates for a period of two years, from October 1, 2005, through September 30, 2007. During this time, the Director of Indigent Defense Services shall evaluate the services provided by Prisoner Legal Services, Inc. The Office of Indigent Defense Services shall provide an interim report of its evaluation to the Chairs of the Senate and House of Representatives Appropriations Committees and Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and a final report of its evaluation by May 1, 2007. The interim report shall describe the evaluation process and criteria, the status of the evaluation, and any preliminary findings.

**SECTION 14.9.(c)** The sum of one million eight hundred eighty-three thousand eight hundred sixty-five dollars (\$1,883,865) for the 2005-2006 fiscal year and

the sum of two million five hundred eleven thousand eight hundred twenty dollars (\$2,511,820) for the 2006-2007 fiscal year shall be transferred from the Department of Correction to the Office of Indigent Defense Services to implement this section.

**SECTION 14.9.(d)** Subsections (a) and (b) of this section become effective October 1, 2005. The remainder of this section becomes effective July 1, 2005.

#### **WAKE COUNTY PUBLIC DEFENDER OFFICE FUNDS**

**SECTION 14.10.** Of the funds appropriated to the Judicial Department, Office of Indigent Defense Services, in this act, the Office of Indigent Defense Services shall use up to the sum of two million three hundred thousand five hundred thirty-four dollars (\$2,300,534) for the 2005-2006 fiscal year and the sum of two million one hundred eighty-one thousand three hundred twenty-three dollars (\$2,181,323) for the 2006-2007 fiscal year to establish a public defender's office in the Tenth Defender District, as authorized by Section 14.4(b) of S.L. 2004-126. The funds shall be used to establish the public defender, 20 assistant public defenders, four investigators, one administrative assistant II, and five legal assistants.

#### **OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS**

**SECTION 14.11.** The Judicial Department, Office of Indigent Defense Services, may use up to the sum of one million sixty-nine thousand six hundred forty-five dollars (\$1,069,645) in appropriated funds during the 2005-2006 fiscal year and up to the sum of one million twenty-three thousand one hundred thirty-five dollars (\$1,023,135) in appropriated funds during the 2006-2007 fiscal year for the expansion of existing offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services by creating up to 10 new attorney positions and five new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

#### **OFFICE OF INDIGENT DEFENSE SERVICES REPORT**

**SECTION 14.12.** The Office of Indigent Defense Services shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

- (1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
- (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
- (3) Plans for changes in rules, standards, or regulations in the upcoming year; and

- (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

The Office shall also consult with the Conference of District Attorneys of North Carolina, the Conference of District Court Judges, and the Conference of Superior Court Judges in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor traffic offenses, changing the way that criminal district court is scheduled, and reevaluating the handling of capital cases. The Office shall include these proposals in its reports during the 2005-2007 fiscal biennium.

**CLARIFY THAT FEES PAID TO ATTORNEYS REPRESENTING INDIGENT CLIENTS SHALL BE FIXED IN ACCORDANCE WITH THE RULES ADOPTED BY THE OFFICE OF INDIGENT DEFENSE SERVICES AND MAY NOT BE SET AT HIGHER RATES WITHOUT THE APPROVAL OF THE OFFICE OF INDIGENT DEFENSE SERVICES**

**SECTION 14.13.** G.S. 7A-458 reads as rewritten:

**"§ 7A-458. Counsel fees.**

The fee to which an attorney who represents an indigent person is entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. Fees shall not be set or ordered at rates higher than those established by the rules adopted under this section without the approval of the Office of Indigent Defense Services. Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case."

**ESTABLISH PUBLIC DEFENDER'S OFFICE IN THE FIFTH DEFENDER DISTRICT**

**SECTION 14.14.(a)** G.S. 7A-498.7(a) reads as rewritten:

**"§ 7A-498.7. Public Defender Offices.**

(a) The following counties of the State are organized into the defender districts listed below, and in each of those defender districts an office of public defender is established:

Defender District	Counties
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
3A	Pitt
3B	Carteret

<u>5</u>	<u>New Hanover, Pender</u>
10	Wake
12	Cumberland
14	Durham
15B	Orange, Chatham
16A	Scotland, Hoke
16B	Robeson
18	Guilford
21	Forsyth
26	Mecklenburg
27A	Gaston
28	Buncombe

After notice to, and consultation with, the affected district bar, senior resident superior court judge, and chief district court judge, the Commission on Indigent Defense Services may recommend to the General Assembly that a district or regional public defender office be established. A legislative act is required in order to establish a new office or to abolish an existing office."

**SECTION 14.14.(b)** Of the funds appropriated to the Judicial Department, Office of Indigent Defense Services, in this act, the Office of Indigent Defense Services shall use up to the sum of one million three hundred eighty-five thousand five hundred eighty-four dollars (\$1,385,584) for the 2005-2006 fiscal year and up to the sum of one million three hundred eighty-five thousand five hundred eighty-four dollars (\$1,385,584) for the 2006-2007 fiscal year to establish a public defender's office in the Fifth Defender District, as established in this section. The funds shall be used to establish the public defender, 11 assistant public defenders, two investigators, and three support positions.

**MEDIATION FUNDS**

**SECTION 14.16.** Of the funds appropriated to the Judicial Department for transfer to the community mediation centers for the 2005-2006 fiscal year, the sum of one hundred thirty-four thousand thirty-one dollars (\$134,031) shall be allocated to Carolina Dispute Settlement Services, Inc., to serve Wake, Vance, Granville, Franklin, and Warren Counties, and the sum of sixty-five thousand dollars (\$65,000) shall be allocated to Women-in-Action for the Prevention of Violence and Its Causes, Inc., to serve Durham County.

**STUDY WAKE COUNTY FAMILY COURT**

**SECTION 14.18.** The Administrative Office of the Courts shall study the feasibility of establishing a family court in District Court District 10. The Administrative Office of the Courts shall report the results of its study to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

## **JUVENILE RECIDIVISM REPORT**

**SECTION 14.19.(a)** Chapter 164 of the General Statutes is amended by adding a new section to read:

**"§ 164-48. Biennial report on juvenile recidivism.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial recidivism studies of juveniles in North Carolina. Each study shall be based upon a sample of juveniles adjudicated delinquent and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample adjudication. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first recidivism study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2007, and future reports shall be made by May 1 of each odd-numbered year."

**SECTION 14.19.(b)** The Sentencing and Policy Advisory Commission shall report on its progress in developing the biennial juvenile recidivism report mandated by G.S. 164-48, as enacted by subsection (a) of this section, to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006.

**SECTION 14.19.(c)** Article 33 of Chapter 7B of the General Statutes is repealed.

## **REIMBURSEMENT FOR USE OF PERSONAL VEHICLES**

**SECTION 14.21.** Notwithstanding G.S. 138-6(a)(1), the Judicial Department, during the 2005-2007 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

## **DRUG TREATMENT COURT FUNDS**

**SECTION 14.22.** Funds appropriated to the Judicial Department in this act for the Drug Treatment Court program shall be used only to provide treatment and case coordination to offenders sentenced to intermediate punishment and to offenders sentenced to community punishment who are at risk of revocation.

## **PART XV. DEPARTMENT OF JUSTICE**

### **USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT**

**SECTION 15.1.(a)** Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2005-2007 biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those

departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

**SECTION 15.1.(b)** The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

**SECTION 15.1.(c)** Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

#### **PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES**

**SECTION 15.2.** The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

#### **CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS**

**SECTION 15.3.** Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

#### **REIMBURSEMENT FOR UNC BOARD OF GOVERNORS LEGAL REPRESENTATION**

**SECTION 15.4.** The Department of Justice shall be reimbursed by the Board of Governors of The University of North Carolina for two Attorney III positions to provide legal representation to The University of North Carolina System.

#### **REPORT ON CRIMINAL RECORD CHECKS CONDUCTED FOR CONCEALED HANDGUN PERMITS/STUDY FEE ADJUSTMENT FOR CRIMINAL RECORD CHECKS**

**SECTION 15.5.(a)** The Department of Justice shall report by January 15 each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the receipts, costs for, and number of criminal record checks performed in connection with applications for concealed weapons permits. The report



by the Department of Justice shall also include information on the number of applications received and approved for firearms safety courses.

**SECTION 15.5.(b)** The Office of State Budget and Management, in consultation with the Department of Justice, shall study the feasibility of adjusting the fees charged for criminal record checks conducted by the Division of Criminal Information of the Department of Justice as a result of the increase in receipts from criminal record checks. The study shall include an assessment of the Division's operational, personnel, and overhead costs related to providing criminal record checks and how those costs have changed since the prior fiscal year. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

#### **NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED**

**SECTION 15.6.** The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

#### **REDUCE BACKLOG OF RAPE KITS**

**SECTION 15.7.(a)** Of the funds appropriated by this act to the Department of Justice, the sum of two hundred fifty thousand dollars (\$250,000) for the 2005-2006 fiscal year and the sum of two hundred fifty thousand dollars (\$250,000) for the 2006-2007 fiscal year shall be used to contract with private entities to reduce the backlog of rape kits in storage in local law enforcement agencies and to expedite other forensic DNA analysis. The Department shall contract with private entities to analyze bodily fluids, DNA evidence, as "DNA" is defined in G.S. 15A-266.2, or both, in cases in which a suspect has not been identified. The Department shall maximize the use of federal grant funds to expedite the elimination of the backlog.

**SECTION 15.7.(b)** The Department of Justice shall report, on or before February 1, 2006, and annually thereafter to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the number of rape kits analyzed by private entities and how many of those analyses resulted in arrests or convictions. The Department shall also report on the number of rape kits analyzed by the SBI Crime Lab, the amount of the remaining backlog, and the estimated time left to eliminate the backlog.

**SECTION 15.7.(c)** Except as provided otherwise by this subsection, the Department of Justice shall hire only nonsworn personnel to fill vacant positions in the State Bureau of Investigation laboratory. A position may be filled with a sworn agent in any of the following circumstances: (i) the position is a promotion for a sworn agent

who was employed at the State Bureau of Investigation laboratory prior to July 1, 2005, (ii) the position is a forensic drug chemist position that has as a primary duty "responding to clandestine methamphetamine laboratories," or (iii) the position is a forensic impressions analyst position that has as a primary duty "responding to clandestine methamphetamine laboratories."

### **STUDY DNA TESTING AND ANALYSIS COSTS**

**SECTION 15.8.** The Office of State Budget and Management, in consultation with the Department of Justice, shall study the cost of testing and analyzing DNA samples. The study shall include all of the following: a determination of the unit cost for analyzing a rape kit and a comparison of that cost with the unit cost for the same analysis when performed by other labs, both public and private; a comparison of the amount of funds and length of time required to eliminate the backlog of rape kits using private labs versus the SBI crime lab; and a survey of the funding sources used by other states for their DNA testing and analysis lab costs. The Office of State Budget and Management shall report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

### **STATEWIDE AUTOMATED FINGERPRINT SYSTEM REPLACEMENT**

**SECTION 15.9.(a)** The Department of Justice, in consultation with the Criminal Justice Information Network Board, shall continue to plan for the upgrade and replacement of the North Carolina Statewide Automated Fingerprint Identification System (SAFIS). Prior to any determination to pursue sole-source procurement for this project, the Department of Justice shall issue a request for proposals from qualified vendors on a competitive basis in order to evaluate economies available to the State and options for the transfer of data to the new system. The Department of Justice shall negotiate with the current vendor to develop an agreement regarding maintenance of the current equipment until the new system becomes fully operational.

**SECTION 15.9.(b)** By November 1, 2005, and prior to issuing the Request for Proposals, the Department of Justice and the Criminal Justice Information Network Board shall provide a status report to the Subcommittee for Justice and Public Safety of the Joint Legislative Commission on Governmental Operations that shall include all of the following:

- (1) A description of the system and project status report.
- (2) The cost estimates for equipment replacement, maintenance, and operating costs, including proposed sources of funding.
- (3) An inventory of locally owned SAFIS equipment, the compatibility of that equipment with any new State-level hardware, the time line and cost for replacing obsolete equipment, and options for funding the replacement of local equipment.
- (4) Procurement options.
- (5) The time line for completion of the project.

**SECTION 15.9.(c)** By March 1, 2006, and prior to entering into any contract for services or equipment, the Department of Justice shall consult with the Subcommittee for Justice and Public Safety of the Joint Legislative Commission on Governmental Operations regarding the final request for proposal responses, the Department's recommendations for awarding the contract, and the Department's implementation schedule.

**SECTION 15.9.(d)** Notwithstanding G.S. 143-18, the Department of Justice may carry forward an amount not to exceed one million four hundred ninety-five thousand dollars (\$1,495,000) of the operating funds that otherwise would revert in fiscal year 2004-2005 and deposit those funds in a reserve account in the Office of State Budget and Management. This reserve shall be distributed by the Office of State Budget and Management to support the replacement of the State's SAFIS system and equipment. These funds shall not be used to expand the SAFIS system capacity or usage for noncriminal justice agencies or to purchase equipment for non-State entities.

Prior to the report required by November 1, the Office of State Budget and Management is authorized to release reserve funds to support project management, planning, and procurement activities. After the March 1 consultation, the Office of State Budget and Management may, at its discretion, release reserve funds for onetime equipment purchases, fingerprint file conversion, and related nonrecurring SAFIS system replacement needs. Priority shall be given to replacing the central hardware and database in the State Bureau of Investigation.

## **PART XVI. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION**

### **S.O.S. ADMINISTRATIVE COST LIMITS**

**SECTION 16.1.** Of the funds appropriated to the Department of Juvenile Justice and Delinquency Prevention in this act, not more than four hundred fifty thousand dollars (\$450,000) for the 2005-2006 fiscal year and not more than four hundred fifty thousand dollars (\$450,000) for the 2006-2007 fiscal year may be used to administer the S.O.S. Program, to provide technical assistance to applicants and to local S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

### **JCPC GRANT REPORTING AND CERTIFICATION**

**SECTION 16.2.(a)** On or before May 1 each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants. The list shall include for each recipient the amount of the grant awarded, the membership of the local committee or council administering the award funds on the local level, and a short description of the local services, programs, or

projects that will receive funds. The list shall also identify any programs that received grant funds at one time but for which funding has been eliminated by the Department of Juvenile Justice and Delinquency Prevention. A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

**SECTION 16.2.(b)** Each county in which local programs receive Juvenile Crime Prevention Council grant funds from the Department of Juvenile Justice and Delinquency Prevention shall certify annually through its local council to the Department that funds received are not used to duplicate or supplant other programs within the county.

## **REPORTS ON CERTAIN PROGRAMS**

**SECTION 16.3.(a)** Project Challenge North Carolina, Inc., shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

- (1) The source of referrals for juveniles.
- (2) The types of offenses committed by juveniles participating in the program.
- (3) The amount of time those juveniles spend in the program.
- (4) The number of juveniles who successfully complete the program.
- (5) The number of juveniles who commit additional offenses after completing the program.
- (6) The program's budget and expenditures, including all funding sources.

**SECTION 16.3.(b)** The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

**SECTION 16.3.(c)** Communities in Schools shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee by April 1 each year on the operation and effectiveness of its program. The report shall include information on:

- (1) The number of children served.
- (2) The number of volunteers used.
- (3) The impact on children who have received services from Communities in Schools.
- (4) The program's budget and expenditures, including all funding sources.

## **ANNUAL EVALUATION OF COMMUNITY PROGRAMS**

**SECTION 16.4.** The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to the local organizations of the Boys and Girls Clubs established pursuant to Section 21.10 of S.L. 1999-237, the Save Our Students program, the Governor's One-on-One Programs, and multipurpose group homes. The teen court report shall include statistical information on the number of juveniles served, the number and type of offenses considered by teen courts, referral sources for teen courts, and the number of juveniles that become court-involved after participation in teen courts. The report on the Boys and Girls Clubs program shall include information on:

- (1) The expenditure of State appropriations on the program;
- (2) The operations and the effectiveness of the program; and
- (3) The number of juveniles served under the program.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department shall also identify whether the programs are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Subcommittees on Justice and Public Safety of the House of Representatives and Senate Appropriations Committees by March 1 of each year.

## **STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS**

**SECTION 16.5.** Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2005-2006 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants, or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2005-2006 fiscal year, the amount of funds anticipated for the 2006-2007 fiscal year, and the allocation of funds by program and purpose.

## **IMPLEMENTATION OF TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS**

**SECTION 16.6.(a)** The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives

Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report shall include a list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position. The report shall also describe the nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria. The report shall also describe the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter. The Department shall also develop indicators for evaluating staff performance once the model has been implemented.

**SECTION 16.6.(b)** The Department of Juvenile Justice and Delinquency Prevention shall report December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The Department shall identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions.

## **PROGRESS REPORTS ON YOUTH DEVELOPMENT CENTER CAPITAL PROJECTS**

**SECTION 16.7.** The Department of Juvenile Justice and Delinquency Prevention shall report each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee on the Department's progress in the planning, design, and construction of new youth development centers. The report shall include:

- (1) An overall project schedule for each new youth development center showing the original estimated date for construction completion and the original estimated date for occupancy by juvenile offenders, compared to the latest projected dates.
- (2) An explanation of significant delays in the schedule or any potential cost increase.

The Office of State Construction and the Capital Improvement Section of the Office of State Budget and Management shall assist the Department of Juvenile Justice and Delinquency Prevention in the preparation of the report required by this section.

## **JCPC GRANTS TO PREVENT GANG VIOLENCE**

**SECTION 16.8.(a)** Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for Juvenile Crime Prevention Council

grants, the sum of two million dollars (\$2,000,000) shall be used to provide two-year grants to Juvenile Crime Prevention Councils to use for street gang violence prevention and intervention programs. The Department, in conjunction with the Governor's Crime Commission, shall develop a competitive grant award process that gives consideration to programs in rural areas, geographical representation, collaboration among counties, and programs that involve law enforcement agencies or the courts. The criteria shall include a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and presentation of a written plan for the services to be provided by the funds. Juvenile Crime Prevention Councils shall allocate the funds to public and private entities or agencies for programs that meet the criteria established by the Department.

No individual program grant may exceed one hundred thousand dollars (\$100,000).

**SECTION 16.8.(b)** The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate on the total number of grants awarded, a description of each grantee's program, and the amount awarded to each grantee. The Department shall submit its report by April 1, 2006.

## **STUDY OF LOCAL DETENTION CENTERS**

**SECTION 16.9.** The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee ("Committee") shall study the four juvenile detention centers located in Durham, Guilford, Forsyth, and Mecklenburg Counties that are operated by the counties. For each of the facilities, the review shall include:

- (1) Recent admission trends and projections of future population.
- (2) The offense history and assessed needs of the population.
- (3) Whether staffing levels are appropriate for the number and types of offenders housed in the facility.
- (4) Whether the center has adequate housing capacity.
- (5) The cost to operate the center, including the formula for allocating costs between the county that operates the facility and the State.
- (6) The feasibility of the State operating the local detention center, if recommended by one or more of the counties that operate the facility.
- (7) Determine the repair and renovation needs and estimate the cost of any repairs or renovations.
- (8) The estimated cost to plan, design, and construct new detention centers, if appropriate.

The Committee shall conduct the study in conjunction with the local detention centers, the Office of State Budget and Management, the Office of State Construction of the Department of Administration, and the Department of Juvenile Justice and Delinquency Prevention.

The Committee shall report its findings to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the

Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate upon the convening of the 2006 Regular Session of the 2005 General Assembly.

## **CONSTRUCTION OF JUVENILE YOUTH DEVELOPMENT CENTERS**

**SECTION 16.10** The Department of Juvenile Justice and Delinquency Prevention and the Department of Administration, State Construction Office, shall continue the planning, design, and construction of up to 224 youth development center beds. The 224 youth development center beds shall be allocated at four 32-bed facilities and one 96-bed facility, as recommended by the Department of Juvenile Justice and Delinquency Prevention in its Capital Plan presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on November 23, 2004.

## **ALTERNATIVES TO JUVENILE COMMITMENT/JUVENILE CRIME PREVENTION COUNCILS**

**SECTION 16.11.(a)** Of the funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention, the sum of two hundred fifty thousand dollars (\$250,000) shall be used to expand Juvenile Crime Prevention Councils demonstration projects designed to reduce commitments to youth development centers. Specifically, the funds shall be awarded to Juvenile Crime Prevention Councils to provide residential and/or community-based intensive services to juveniles who have been adjudicated delinquent with a level 2 or 3 disposition or who are reentering the community after serving time in a youth development center. The Department shall develop a competitive grant award process to allocate the funds to county Juvenile Crime Prevention Councils. The programs must initiate services to the targeted population no later than March 1, 2006. On June 30, 2006, any funds not awarded for demonstration projects pursuant to this section by the Department shall revert to the General Fund. The Department may award up to four grants to Juvenile Crime Prevention Councils, and no individual grant may exceed one hundred thousand dollars (\$100,000).

**SECTION 16.11.(b)** The Department of Juvenile Justice and Delinquency Prevention shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee no later than March 1, 2006, on the implementation and award process. The report shall provide a detailed description of the services to be provided by each program, the number and types of juveniles to be served, and the amount awarded to each program.

**SECTION 16.11.(c)** The Department of Juvenile Justice and Delinquency Prevention shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety no later than March 1, 2006, and annually thereafter, on the results of the alternatives to commitment demonstration programs funded by Section 16.7 of S.L. 2004-124. The 2007 report and all annual reports thereafter shall also include projects funded by this section for the 2005-2006 fiscal year. Specifically, the report shall provide a detailed description of each of the



demonstration programs, including the numbers of juveniles served, their adjudication status at the time of service, the services/treatments provided, the length of service, the total cost per juvenile, and the six- and 12-month recidivism rates for the juveniles after the termination of program services.

#### **JUVENILE JUSTICE ADVISORY COUNCIL MEETINGS**

**SECTION 16.12.** G.S. 143B-556(i) reads as rewritten:

"(i) The chairs shall convene the Council. Meetings shall be held as often as necessary ~~but not less than four times a year.~~ necessary."

### **PART XVII. DEPARTMENT OF CORRECTION**

#### **FEDERAL GRANT REPORTING**

**SECTION 17.1.** The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

#### **REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM**

**SECTION 17.2.** The Department of Correction may use funds available to the Department for the 2005-2007 biennium to pay the sum of forty dollars (\$40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

## **HOLIDAY PAY FOR DEPARTMENT OF CORRECTION STAFF**

**SECTION 17.3.** Holiday pay for Department of Correction staff entitled to holiday pay shall be one hundred fifty percent (150%) of regular pay during the 2005-2007 biennium, except that the Department of Correction may use funds available to pay up to one hundred seventy-five percent (175%) of regular pay for holiday pay during the 2005-2007 biennium.

## **DEPARTMENT OF CORRECTION SECURITY STAFFING FORMULAS**

**SECTION 17.4.(a)** G.S. 143B-262.5 reads as rewritten:

### **"§ 143B-262.5. Security Staffing.**

(a) ~~The Department of Correction shall conduct security staffing post-audits of each prison at least biannually, the first such audit to be completed during the 2002-2003 fiscal year. The initial post audit shall be conducted jointly by Department staff and a consultant, external to the Department, and shall include analysis of the staffing levels assigned for supervision of correctional officers. conduct:~~

- (1) On-site postaudits of every prison at least once every three years;
- (2) Regular audits of postaudit charts through the automated postaudit system; and
- (3) Other staffing audits as necessary.

(b) ~~The Department of Correction shall update the security staffing relief formula biannually, the first update to be completed during the 2002-2003 fiscal year. at least every three years.~~ Each update shall include a review of all annual training requirements for security staff to determine which of these requirements should be mandatory and the appropriate frequency of the training. The Department shall survey other states to determine which states use a vacancy factor in their staffing relief formulas."

**SECTION 17.4.(b)** The Department of Correction shall begin implementation of the 2004-2005 postaudit by July 1, 2005, and provide a progress report by October 1, 2005, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on the implementation of the new postaudit at each prison.

**SECTION 17.4.(c)** The Department of Correction shall report on the final implementation of the 2004-2005 postaudit of each prison to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006. The report shall also include an update on the Department's progress in implementing the staffing recommendations of the National Institute of Corrections, including a status report on the implementation of a centralized postaudit control system, the automation of leave records, and the survey of other states' use of a vacancy factor in staffing relief formulas.

## **USE OF CLOSED PRISON FACILITIES**

**SECTION 17.5.** In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and

local officials, and with State agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction shall also provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

#### **INMATE COSTS/MEDICAL BUDGET FOR PRESCRIPTION DRUGS AND INMATE CLOTHING AND LAUNDRY SERVICES**

**SECTION 17.6.(a)** If the cost of providing food and health care to inmates housed in the Division of Prisons is anticipated to exceed the continuation budget amounts provided for that purpose in this act, the Department of Correction shall report the reasons for the anticipated cost increase and the source of funds the Department intends to use to cover those additional needs to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

**SECTION 17.6.(b)** Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of prescription drugs for inmates if expenditures are projected to exceed the Department's inmate medical continuation budget for prescription drugs. The Department shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

**SECTION 17.6.(c)** Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for the purchase of clothing and laundry services for inmates if expenditures are projected to exceed the Department's budget for clothing and laundry services. The Department

shall consult with the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

### **CONVERSION OF CONTRACTED MEDICAL POSITIONS**

**SECTION 17.7.(a)** The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document that the total savings generated will exceed the total cost of the new positions for each facility. Where practical, the Department shall convert contract positions to permanent positions by using existing vacancies in medical positions.

**SECTION 17.7.(b)** The Department of Correction shall report by April 1, 2006, to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on all conversions made pursuant to this section, by type of position and location, and on the savings generated at each correctional facility.

### **LIMIT USE OF OPERATIONAL FUNDS**

**SECTION 17.8.** Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except for certain management, security, and support positions necessary to prepare the facility for opening, as authorized in the budget approved by the General Assembly.

### **FEDERAL GRANT MATCHING FUNDS**

**SECTION 17.9.** Notwithstanding the provisions of G.S. 148-2, the Department of Correction may use up to the sum of seven hundred fifty thousand dollars (\$750,000) from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

### **COMPUTER/DATA PROCESSING SERVICES FUNDS**

**SECTION 17.10.** Notwithstanding the provisions of G.S. 143-23(a2), the Department of Correction may use funds available during the 2005-2006 fiscal year for expenses for computer/data processing services if expenditures exceed the Department's continuation budget amount for those services. The Department shall report to the Joint Legislative Commission on Governmental Operations prior to exceeding the continuation budget amount.

## **MEDIUM CUSTODY ROAD CREW COMPENSATION/COMMUNITY WORK CREWS**

**SECTION 17.11.(a)** Of funds appropriated to the Department of Transportation by this act, the sum of ten million dollars (\$10,000,000) per year shall be transferred by the Department of Transportation to the Department of Correction during the 2005-2007 biennium for the actual costs of highway-related labor performed by medium-custody prisoners, as authorized by G.S. 148-26.5. This transfer shall be made quarterly in the amount of two million five hundred thousand dollars (\$2,500,000). The Department of Transportation may use funds appropriated by this act to pay an additional amount exceeding the ten million dollars (\$10,000,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

**SECTION 17.11.(b)** The Department of Correction may use up to 39 work crews for Department of Transportation litter control projects. The Department of Transportation shall transfer at least one million three hundred thousand dollars (\$1,300,000) per year from the Highway Fund to the Department of Correction during the 2005-2007 biennium to cover the cost of those work crews. Should the two departments determine that the actual cost of operating 39 work crews exceeds that amount, the Department of Transportation shall transfer an additional amount as agreed upon by the two departments and the Office of State Budget and Management.

## **INMATE CUSTODY AND CLASSIFICATION SYSTEM**

**SECTION 17.12.(a)** The Department of Correction shall review the current inmate custody and classification system, with the assistance of consultants from the National Institute of Corrections. The review shall focus primarily on the custody classification instrument used to assess inmate custody and the policies and practice of overriding the assessed custody level. The review should focus particularly on determining whether the instrument is effective in predicting custody classification, analyzing the current override rate by custody level, and assessing any need for changes in the override policy. The Department should request assistance from the National Institute of Corrections in obtaining (i) a comparison between Department of Correction override rates and policies and those of other states; (ii) suggestions on an acceptable override rate for classification systems; and (iii) any recommendations the NIC may have on the Department's custody classification instrument and override policy.

**SECTION 17.12.(b)** The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than April 15, 2006.

## **EXTEND LIMITS OF CONFINEMENT/TERMINALLY ILL AND PERMANENTLY AND TOTALLY DISABLED INMATES**

**SECTION 17.13.** G.S. 148-4 reads as rewritten:

**"§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.**

The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

- (1) Contact prospective employers; or
- (2) Secure a suitable residence for use when released on parole or upon discharge; or
- (3) Obtain medical services not otherwise available; or
- (4) Participate in a training program in the community; or
- (5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or
- (6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs

- determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society; or
- (7) Be on maternity leave, for a period of time not to exceed 60 days. The county departments of social services are expected to cooperate with officials at the North Carolina Correctional Center for Women to coordinate prenatal care, financial services, and placement of the child; or
- (8) Receive palliative care, only in the case of a terminally ill inmate or a permanently and totally disabled inmate that the Secretary finds no longer poses ~~a threat to society~~, a significant public safety risk, and only after consultation with any victims of the inmate or the victims' families. For purposes of this subdivision, the term "terminally ill" describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within ~~12 months~~ six months, and that is so debilitating that it is highly unlikely that the inmate poses a significant public safety risk. For purposes of this subdivision, the term "permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical ~~condition~~, condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison, and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk. The Department's medical director shall notify the Secretary immediately when an inmate has been classified as terminally ill and shall provide regular reports on inmates classified as permanently and totally disabled. The Secretary shall act expeditiously in determining whether to extend the limits of confinement under this subdivision upon receiving notice that an inmate has been classified as terminally ill or permanently and totally disabled and, in the case of a terminally ill inmate, the Secretary shall make a good faith effort to reach a determination within 30 days of receiving notice of the inmate's terminal condition.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45."

## **REPORT ON INMATE COMMUNITY WORK CREWS AND INMATE LABOR CONTRACTS**

**SECTION 17.14.** The Department of Correction shall report by March 1, 2006, to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections,

Crime Control, and Juvenile Justice Oversight Committee on the inmate labor contracts and community work programs, identifying total project man-hours provided by inmates and Department of Correction employees to client agencies, the total Department operating costs for these programs, and the benefits of these programs. The report shall also group the man-hour and cost information by the major client groups and estimate the average project cost and average project duration. The report shall also provide suggested administrative procedures for collecting a portion of the cost of inmate work crews and inmate labor contracts and shall include an evaluation regarding the feasibility, advantages, and disadvantages of charging a portion of the costs to local governments and State agencies.

### **STUDY COST CONTAINMENT OF INMATE HEALTH CARE**

**SECTION 17.15.(a)** The Department of Correction shall study and develop new approaches to reducing the cost of inmate medical services while continuing to provide services necessary to maintain basic health and provide adequate care. In its study, the Department shall consider and report on all of the following:

- (1) Methods to decrease the cost of services charged by external medical providers for medical, dental, psychiatric, and other health care services provided to inmates under the custody of the Department of Correction.
- (2) The feasibility of a negotiated reimbursement rate for medical services provided by hospitals and other health care providers that does not exceed the rate paid for the same or similar service or diagnostic-related grouping under the (i) Teachers' and State Employees' Comprehensive Major Medical Plan (State Health Plan), (ii) the Medicaid rate, or (iii) other negotiated reimbursement rates.
- (3) The potential cost savings to be derived from contracting with a third-party administrator to handle claims and utilization management for external health care delivery expenditures to inmates.
- (4) The progress of attempts by the Department of Correction to renegotiate provider reimbursement rates.
- (5) The progress made by the Department of Correction in reducing inmate medical costs by further regionalization and consolidation of hospital and physician services and by cost cutting efforts carried out by new inmate medical personnel funded for the 2005-2007 fiscal biennium.
- (6) The potential cost/benefit of reducing the number of contract medical personnel and replacing contract staff with permanent Department of Correction medical positions.
- (7) The feasibility of partnering with The University of North Carolina Health Care System to provide a managed health care system for inmates.

**SECTION 17.15.(b)** The Department of Correction shall consult with the Executive Administrator of the State Health Plan, The University of North Carolina



Health Care System, and organizations representing medical providers in its efforts to control the cost of medical services for prisoners and to address any issues of concern regarding the provision and administration of inmate medical care.

**SECTION 17.15.(c)** Notwithstanding G.S. 143-23, if the Department of Correction is unable to achieve the total reduction amount of four million six hundred thousand dollars (\$4,600,000) specified in this act for reducing hospital and physician services line items, the Department of Correction may use salary and nonsalary funds from other programs to attain these reductions. The Department of Correction shall report by April 1, 2006, to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on its efforts to achieve the reduction amount and identify the amount and source of funds for any portion of the reduction that is taken from noninmate medical line items.

**SECTION 17.15.(d)** The Department of Correction shall issue a report detailing its initial study findings to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1, 2006, and present a final report by December 2006 to the General Assembly.

#### **CORRECTION ENTERPRISES LONG-RANGE PLAN/REPLACEMENT OF UMSTEAD LAUNDRY**

**SECTION 17.16.(a)** The Department of Correction, through the Correction Enterprises Program, shall update its long-range business plan to identify alternatives for (i) increasing productivity and expanding markets for current Enterprise products; (ii) increasing the number of inmates employed in Correction Enterprises; and (iii) identifying new or expanded industries that will best meet the goals of training inmates while providing reasonable profits that allow Correction Enterprises to expand industry sites and maintain current sites where appropriate. The study shall include a review of the potential to expand the Prison Industry Enhancement (PIE) Programs with private industry. The Plan shall also identify capital and operating costs for implementing the long-range plan.

The Department of Correction shall submit the long-range business plan required by this section to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

**SECTION 17.16.(b)** In preparation for the scheduled closing of Umstead Hospital in 2007, the Department of Correction shall develop a plan for the replacement of the Correction Enterprises laundry operation at Umstead Hospital and include that report with the long-range plan required by this section.

#### **STAFFING STUDY OF UNIT MANAGEMENT**

**SECTION 17.17.** The Department of Correction shall conduct an organization and staffing study of unit management in the State prison system, focusing on the 18 prison facilities that use unit management. The Department shall review workload and staffing at each of the prisons and make recommendations for staffing

changes and staffing efficiencies. The study shall consider the responsibilities and workloads of custody supervisors and program staff in relation to unit managers and determine whether certain functions should be the responsibility of custody supervisors or program staff.

The Department shall report its findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

#### **ENERGY COMMITTED TO OFFENDERS/CONTRACT AND REPORT**

**SECTION 17.17A.** The Department of Correction may continue to contract with Energy Committed To Offenders, Inc., for the purchase of prison beds for minimum security female inmates during the 2005-2007 biennium. Energy Committed To Offenders, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

#### **STUDY CONVERSION TO MINIMUM SECURITY/CLEVELAND CORRECTIONAL CENTER**

**SECTION 17.18.** As part of its development and update of its long-range prison housing plan, the Department of Correction shall study the feasibility of converting Cleveland Correctional Center from medium custody to minimum custody or operating a medium custody facility with a minimum custody component. The Department shall also study the feasibility of expanding Cleveland Correctional Center as a medium or minimum custody facility, or some combination of the two. The Department shall conduct a cost analysis of expansion options, including a determination of possible savings by using inmate labor to assist with construction. The Department of Correction shall report its findings to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

#### **REPORT ON ELECTRONIC MONITORING PROGRAM/USE OF GLOBAL POSITIONING SYSTEMS FOR SEX OFFENDERS**

**SECTION 17.19.(a)** The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on its efforts to increase the use of electronic monitoring of sentenced offenders in the community as an alternative to the incarceration of probation violators. The report shall also document the geographical distribution of electronic monitoring use compared to other intermediate sanctions. The Department shall also analyze the reasons for the underutilization of the electronic monitoring program and include its findings in the report.

**SECTION 17.19.(b)** The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005, on the following:

- (1) The Department's evaluation of its 2004 pilot program for monitoring sex offenders and domestic violence offenders using Global Positioning Systems (GPS) technology.
- (2) The results of the Request for Proposal issued in the 2004-2005 fiscal year for GPS monitoring of offenders supervised by the Division of Community Corrections.
- (3) The Department's recommendations for implementing GPS monitoring of sex offenders, including:
  - a. An evaluation of the costs and benefits of passive versus active GPS technology.
  - b. The proposed coverage areas for GPS monitoring and the location of any geographic or technological limitations that prevent statewide coverage.
  - c. The size and characteristics of the targeted offender population and the proposed number of offenders to be monitored.
  - d. The contractual and internal costs of the monitoring program.
  - e. The proposed caseloads for probation officers who would supervise offenders using GPS technology.

The Department shall also explore funding options through grants and other sources, including the possibility of charging a fee to offenders to partially offset the costs of the program. Funds made available for federal grant matching purposes by Section 17.9 of this act may be used to match grants for GPS supervision. The Department shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on any funds identified.

## **REPORT ON PROBATION AND PAROLE CASELOADS**

**SECTION 17.20.(a)** The Department of Correction shall report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

- (1) Data on current caseload averages for Probation Parole Officer I, Probation Parole Officer II, and Probation Parole Officer III positions;
- (2) An analysis of the optimal caseloads for these officer classifications;
- (3) An assessment of the role of surveillance officers;
- (4) The number and role of paraprofessionals in supervising low-risk caseloads;
- (5) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004;

- (6) The selection of a risk assessment and the resulting distribution of offenders among risk levels; and
- (7) Any position reallocations in the previous 12 months, and the reasons for and fiscal impact of those reallocations.

**SECTION 17.20.(b)** The Department of Correction shall conduct a study of probation/parole officer workload at least biannually. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

**SECTION 17.20.(c)** The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1, 2007.

### **COMMUNITY SERVICE WORK PROGRAM**

**SECTION 17.21.** The Department of Correction shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the integration of the Community Service Work Program into the Division of Community Corrections, including the Department's ability to monitor the collection of offender payments from unsupervised offenders sentenced to community service. The Department shall also report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year on the average caseloads of Community Service Work Program coordinators, by district, division, and statewide. The report shall also include the money collected, the type and value of the work performed, and the number of offenders in the Community Service Work Program, by type of referral (i.e. parole, supervised probation, unsupervised probation or community punishment, DWI, or any other agency referrals).

### **REPORTS ON NONPROFIT PROGRAMS**

**SECTION 17.22.(a)** Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

**SECTION 17.22.(b)** Summit House shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

**SECTION 17.22.(c)** Women at Risk shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

#### **CRIMINAL JUSTICE PARTNERSHIP PROGRAM**

**SECTION 17.23.(a)** It is the intent of the General Assembly that State Criminal Justice Partnership Program funds not be used to fund case manager positions when those services can be reasonably provided by Division of Community Corrections personnel or by the Treatment Alternatives to Street Crime (TASC) Program in the Department of Health and Human Services.

**SECTION 17.23.(b)** Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

**SECTION 17.23.(c)** The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

**SECTION 17.23.(d)** The Department of Correction shall report by February 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

- (1) The amount of funds carried over from the prior fiscal year;

- (2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
- (3) Any counties the Department anticipates will submit requests for new implementation grants;
- (4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;
- (5) An analysis of offender participation data received, including data on each program's utilization and capacity;
- (6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards; and
- (7) An evaluation of whether each sentenced offender program meets program standards developed by the Division of Community Corrections in consultation with the Division of Research and Planning.

**SECTION 17.23.(e)** G.S. 143B-273.14(c) reads as rewritten:

"(c) When a county receives more than fifty thousand dollars (\$50,000) in community-based corrections funds, then that county shall use at least fifty percent (50%) of those funds to develop programs for offenders who receive intermediate punishments. No county shall use more than twenty-five percent (25%) of its funds to serve offenders released from jail prior to trial."

**SECTION 17.23.(f)** Effective July 1, 2006, G.S. 143B-273.4 reads as rewritten:

**"§ 143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who ~~either is in confinement awaiting trial, or~~ was convicted of a misdemeanor or a felony offense and received a nonincarcerative sentence of an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be:

- (1) ~~Offenders~~ be offenders sentenced to intermediate ~~punishments;~~ and
- (2) ~~Offenders who are appropriate for release from jail prior to trial under the supervision of a pretrial monitoring program.~~ punishments."

**SECTION 17.23.(g)** G.S. 143B-273.15 reads as rewritten:

**"§ 143B-273.15. Funding formula.**

To determine the grant amount for which a county or counties may apply, the granting authority shall apply the following formula:

- (1) ~~Twenty percent (20%)~~ Twenty-five percent (25%) based on a fixed equal dollar amount for each county;

- (2) ~~Sixty percent (60%)~~Fifty percent (50%) based on the county share of the State population; and
- (3) ~~Twenty percent (20%)~~Twenty-five percent (25%) based on the supervised probation admissions-intermediate punishment entry rate for the ~~county~~county, using the total of the three most recent years of data available divided by the average county population for that same period.

The sum of the amounts in subdivisions (1), (2), and (3) is the total amount of the funding that a county may apply for under this subsection.

Grants to participating counties are for a period of one fiscal year with unobligated funds being returned to the Account at the end of the grant period. Funds are provided to participating counties on a reimbursement basis unless a county documents a need for an advance of grant funds. The data used for this funding formula shall be updated at least once every three years."

**SECTION 17.23.(h)** For the 2005-2006 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-nine percent (99%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. Funding caps shall be accomplished by the redistribution of three hundred forty-four thousand four hundred ninety-one dollars (\$344,491) that was spent on case management services in day reporting centers prior to 2002. No funds shall be used to fund programs that did not participate in the Criminal Justice Partnership Program in fiscal year 2004-2005.

For the 2006-2007 fiscal year, notwithstanding the formula in G.S. 143B-273.15, each county's formula allocation shall be capped at no less than ninety-five percent (95%) and no greater than one hundred twenty percent (120%) of the funds allocated to that county for the 2004-2005 fiscal year. After determining the capped formula allocations, funds that were used in the 2005-2006 fiscal year for pretrial release programs shall be reallocated among all participating counties using the formula in G.S. 143B-273.15 and dedicated to sentenced offender programs.

**SECTION 17.23.(i)** Subsection (e) of this section expires July 1, 2006.

## **REPORT ON INMATES ELIGIBLE FOR PAROLE**

**SECTION 17.24.** The Post-Release Supervision and Parole Commission shall report by January 15 and July 15 of each year to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on inmates eligible for parole. These reports shall include at least the following:

- (1) The total number of Fair Sentencing and Pre-Fair Sentencing inmates that were parole-eligible during the current fiscal year and the total number of those inmates that were paroled. The report should group these inmates by offense type, custody classification, and type of parole. The report should also include a more specific analysis of those inmates who were parole-eligible and assigned to minimum custody classification but not released;

- (2) The average time served, by offense class, of Fair Sentencing and Pre-Fair Sentencing inmates compared to inmates sentenced under Structured Sentencing; and
- (3) The projected number of parole-eligible inmates to be paroled or released by the end of the 2007-2008 fiscal year and by the end of each of the next five fiscal years, beginning with the 2008-2009 fiscal year.

**PROVIDE THAT THE TERMS OF THE MEMBERS OF THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION SERVING ON JUNE 30, 2005, EXPIRE ON THAT DATE AND RESTRUCTURE THE COMMISSION TO CONSIST OF ONE FULL-TIME MEMBER AND TWO HALF-TIME MEMBERS**

**SECTION 17.25.(a)** G.S. 143B-267 reads as rewritten:

**"§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.**

The Effective August 1, 2005, the Post-Release Supervision and Parole Commission shall consist of ~~three~~ one full-time ~~members.~~ member and two half-time members. The three ~~full-time~~ members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of ~~the five members presently~~ any members serving on the Commission on June 30, 2005, shall expire on July 31, 1999. that date. ~~The term of one of the members appointed effective August 1, 1999, shall be for one year. The term of one of the members appointed effective August 1, 1999, shall be for two years. The term of one of the members appointed effective August 1, 1999, shall be for three years.~~ Thereafter, the The terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a ~~full-time~~ member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a ~~full-time~~ member of the Commission to serve as ~~chairman~~ chair of the Commission at the pleasure of the Governor.

The granting, denying, revoking, or rescinding of parole, the authorization of work-release privileges to a prisoner, or any other matters of business coming before the Commission for consideration and action shall be decided by majority vote of the full Commission.

The ~~full-time~~ members of the Commission shall receive the salary fixed by the General Assembly in the Current Operations Appropriations Act and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

**SECTION 17.25.(b)** This section becomes effective June 30, 2005.



## **POST-RELEASE SUPERVISION AND PAROLE COMMISSION/REPORT ON STAFFING REORGANIZATION AND REDUCTION**

**SECTION 17.26.** The Post-Release Supervision and Parole Commission shall report by October 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on a plan for restructuring the organization and operation of the Commission and implementing staff reductions to reflect both declines and changes in workload.

## **MUTUAL AGREEMENT PAROLE PROGRAM**

**SECTION 17.27.** The Department of Correction and the Post-Release Supervision and Parole Commission shall make a good faith effort to enroll at least twenty percent (20%) of all program-eligible, pre-Structured Sentencing felons in the Mutual Agreement Parole Program by May 1, 2006. The Department shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and by March 1 of each subsequent year on the number of inmates actually enrolled in the program, the number of inmates who have been paroled as a result of participation in the program, and the number of inmates who have enrolled but terminated as a result of unsuccessful participation in the program. If the twenty percent (20%) participation goal established by this section has not been reached, the report shall explain why the goal was not realized.

## **PAROLE ELIGIBILITY REPORT**

**SECTION 17.28.(a)** The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence", for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

**SECTION 17.28.(b)** For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

- (1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.
- (2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1) of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

- (3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

**SECTION 17.28.(c)** The Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the results of its analysis by October 1, 2005. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinitiate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall report by February 1, 2006, regarding the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

#### **PAYMENT OF COSTS ASSOCIATED WITH CONDITIONS OF PROBATION**

**SECTION 17.29.** G.S. 15A-1343(b) reads as rewritten:

- "(b) Regular Conditions. – As regular conditions of probation, a defendant must:
- (1) Commit no criminal offense in any jurisdiction.
  - (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
  - (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
  - (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
  - (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
  - (6) Pay a supervision fee as specified in subsection (c1).
  - (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.
  - (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).
- (10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.
- (11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.
- (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.

A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11)."

## **INCREASE BED CAPACITY FOR RESIDENTIAL SUBSTANCE ABUSE TREATMENT**

**SECTION 17.30.** The Department of Correction may adjust the current contract for 100 female residential substance abuse treatment beds to guarantee a one hundred percent (100%) occupancy rate. The Department may use available funds for this contract adjustment if necessary. Any contract adjustments shall be effective as soon as practical but no later than October 1, 2005, and shall extend only through June 30, 2006.

## **PART XVIII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

### **ANNUAL EVALUATION OF TARHEEL CHALLENGE PROGRAM**

**SECTION 18.1.** The Department of Crime Control and Public Safety shall report to the Chairs of the House of Representatives and Senate Appropriations

Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium on the operations and effectiveness of the National Guard Tarheel Challenge Program. The report should evaluate the program's effectiveness as an intervention method for preventing juveniles from becoming undisciplined or delinquent. The report shall also evaluate the Program's role in improving individual skills and employment potential for participants and shall include:

- (1) The source of referrals for individuals participating in the Program;
- (2) The summary of types of actions or offenses committed by the participants of the Program;
- (3) An analysis outlining the cost of providing services for each participant, including a breakdown of all expenditures related to the administration and operation of the Program and the education and treatment of the Program participants;
- (4) The number of individuals who successfully complete the Program; and
- (5) The number of participants who commit offenses after completing the Program.

#### **VICTIMS ASSISTANCE NETWORK REPORT**

**SECTION 18.2.** The Department of Crime Control and Public Safety shall report on the expenditure of funds allocated pursuant to this section for the Victims Assistance Network. The Department shall also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department shall submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1 of each year of the biennium.

#### **PART XIX. DEPARTMENT OF ADMINISTRATION**

##### **CONTINUATION OF THE STUDY OF ADVOCACY PROGRAMS IN THE DEPARTMENT OF ADMINISTRATION**

**SECTION 19.1.** The Secretary of the Department of Administration, in collaboration with appropriate entities that concentrate on public policy and business management, shall continue the study that was completed during the 2003-2004 fiscal year of the functions of the advocacy programs that are housed in the Department of Administration to determine the appropriate organizational placement of the programs within State government. The study shall include both the advocacy and service functions of the Division of Veterans Affairs, the Council for Women and the Domestic Violence Commission, the Commission of Indian Affairs, the Governor's Advocacy Council for Persons with Disabilities, the Human Relations Commission, and the Youth

Advocacy and Involvement Office. The study shall also consider whether the functions of the programs could be more efficiently and effectively performed by an appropriate nonprofit organization. The Secretary shall report the findings and recommendations to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006.

#### **VETERANS SCHOLARSHIPS PARTIALLY FUNDED FROM ESCHEAT FUND**

**SECTION 19.2.** In accordance with G.S. 116B-7(b), there is appropriated from the Escheat Fund to the Department of Administration the sum of four million two hundred ninety-seven thousand five hundred forty-four dollars (\$4,297,544) for the 2005-2006 fiscal year and four million three hundred fifty-eight thousand forty-six dollars (\$4,358,046) for the 2006-2007 fiscal year.

#### **STATE VETERANS CEMETERIES**

**SECTION 19.3.** The Department of Administration may use funds credited to the Veterans Burial Fund for the 2005-2007 biennium to cover costs incurred as a result of burials on Saturday or Sunday.

#### **ALLOCATION OF PETROLEUM VIOLATION ESCROW FUNDS**

**SECTION 19.4.(a)** There is appropriated from funds and interest that remain in the Special Reserve for Oil Overcharge Funds to the Department of Health and Human Services the sum of one million dollars (\$1,000,000) for the 2005-2006 fiscal year to be allocated for the Weatherization Assistance Program.

**SECTION 19.4.(b)** The balance of the funds and interest that remain in the Special Reserve for Oil Overcharge Funds after the allocation made pursuant to subsection (a) of this section is appropriated to the Department of Administration for the 2005-2006 fiscal year to be allocated for projects approved by the State Energy Policy Council.

#### **STATE FLEETS SHALL DEVELOP AND IMPLEMENT PLANS TO IMPROVE USE OF ALTERNATIVE FUELS, SYNTHETIC LUBRICANTS, AND EFFICIENT VEHICLES**

**SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by January 1, 2010. Before implementation of any plan, all affected agencies shall report their plan to the Department of Administration. The Department of Administration shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or

additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies.

**SECTION 19.5.(b)** For the purposes of this section, a State-owned vehicle fleet consists of more than 10 motor vehicles, as defined by G.S. 20-4.01, that are designed for highway use and titled to one of the aforementioned entities. Specialty vehicles, as defined by G.S. 20-4.01, that are used for educational purposes, and vehicles exempted under U.S. Executive Order 13149 are subject to ten percent (10%) reductions.

**SECTION 19.5.(c)** Agencies shall report by September 1, 2006, and annually thereafter on September 1, to the Department of Administration on the efforts undertaken to achieve the reductions. The Department of Administration shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter on November 1, on the agencies' progress in meeting their plans.

## **PART XIX-A. DEPARTMENT OF CULTURAL RESOURCES**

### **TRYON PALACE HISTORIC SITES AND GARDENS FUND**

**SECTION 19A.1.** Article 2 of Chapter 121 of the General Statutes is amended by adding a new section to read:

**"§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.**

(a) Fund. – The Tryon Palace Historic Sites and Gardens Fund is hereby created as a special and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. – All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

## **PART XIX-B. GENERAL ASSEMBLY**

### **PRINCIPAL CLERKS' COMPENSATION**

**SECTION 19B.1.** G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ninety thousand five hundred fourteen dollars (\$90,514) payable

monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for additional employment duties beyond those provided by the rules of their House. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

## **PART XX. OFFICE OF THE GOVERNOR**

### **HOUSING FINANCE AGENCY HOME MATCHING FUNDS**

**SECTION 20.1.(a)** Funds appropriated in this act to the Housing Finance Agency for the federal HOME Program shall be used to match federal funds appropriated for the HOME Program. In allocating State funds appropriated to match federal HOME Program funds, the Agency shall give priority to HOME Program projects, as follows:

- (1) First priority to projects that are located in counties designated as Tier One, Tier Two, or Tier Three Enterprise Counties under G.S. 105-129.3; and
- (2) Second priority to projects that benefit persons and families whose incomes are fifty percent (50%) or less of the median family income for the local area, with adjustments for family size, according to the latest figures available from the United States Department of Housing and Urban Development.

The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year concerning the status of the HOME Program and shall include in the report information on priorities met, types of activities funded, and types of activities not funded.

**SECTION 20.1.(b)** If the United States Congress changes the HOME Program such that matching funds are not required for a given program year, then the Agency shall not spend the matching funds appropriated under this act for that program year.

**SECTION 20.1.(c)** Funds appropriated in this act to match federal HOME Program funds shall not revert to the General Fund on June 30, 2006, or on June 30, 2007.

### **HOUSING FINANCE AGENCY SHALL CONTINUE AND EXPAND THE NORTH CAROLINA HOME PROTECTION PILOT PROGRAM AND LOAN FUND**

**SECTION 20.2.(a)** The North Carolina Housing Finance Agency shall continue, develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North

Carolina when the workers are in need of assistance to avoid losing their homes to foreclosure. The Agency shall do all of the following:

- (1) Develop and administer the North Carolina Home Protection Pilot Program and Loan Fund to ensure that workers in the counties selected for the Pilot have assistance to avoid losing their homes to foreclosure. The Program shall include all counties that had greater than seven percent (7%) average unemployment in the 2004-2005 fiscal year.
- (2) Make loans secured by liens on residential real property located in North Carolina to property owners who are eligible for those loans.
- (3) Develop and administer procedures by which property owners at risk of being foreclosed upon may qualify for assistance.
- (4) Designate, approve, and fund nonprofit counseling agencies in counties participating in the Program to be available to assist the Agency in implementing the provisions of this section, and to provide services such as direct mortgagee negotiations on behalf of unemployed workers, and to process loan applications for the Agency.
- (5) Develop and fund enhanced methods by which workers may be notified of foreclosure mitigation services, may easily contact local nonprofit counseling agencies, and may apply for loans from the Agency.
- (6) No later than April 1, 2006, report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on the effectiveness of the Program in accomplishing its purposes, and provide any other information the Agency determines is pertinent or that the General Assembly requests.

**SECTION 20.2.(b)** As used in this section, the following definitions apply:

- (1) Agency. – The North Carolina Housing Finance Agency.
- (2) Counseling agency. – A nonprofit counseling agency located in North Carolina that is approved by the North Carolina Housing Finance Agency.
- (3) Mortgage. – An obligation evidenced by a security document and secured by a lien upon real property located within North Carolina, including a deed of trust and land sale agreement. Mortgage also means an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located.
- (4) Mortgagee. – The owner of a beneficial interest in a mortgage loan, the servicer for the owner of a beneficial interest in a mortgage loan, or the trustee for a securitized trust that holds title to a beneficial interest in a mortgage loan.

**SECTION 20.2.(c)** Notwithstanding Chapters 23, 24, and 45 of the General Statutes or any other provision of law, upon the proper filing of an application for loan assistance by a mortgagor under this section, a mortgagee shall not do the following:

- (1) Accelerate the maturity of any mortgage obligation covered under this section.



- (2) Commence or continue any legal action, including mortgage foreclosure pursuant to Chapter 45 of the General Statutes, to recover the mortgage obligation.
- (3) Take possession of any security of the mortgagor for the mortgage obligation.
- (4) Procure or receive a deed in lieu of foreclosure.
- (5) Enter judgment by confession pursuant to a note accompanying a mortgage.
- (6) Proceed to enforce the mortgage obligation pursuant to applicable rules of civil procedure for a period of 120 days following the date of the mortgagor's properly filed application.

The provisions of this section shall not apply if the mortgagee receives notice from the Agency that the mortgagor's application has been denied.

If a mortgagee acts as proscribed in subdivisions (1) through (6) of this subsection, a mortgagor shall be entitled to injunctive relief without the necessity of providing a bond. This relief shall be in addition to any defenses available under G.S. 45-21.16(d) and any other remedies at law or equity.

Upon the Agency's receipt of a properly filed mortgagor's application for loan assistance, the Agency shall mail notice of the application to the mortgagor's mortgagee within five business days of the Agency's receipt of the application. The Agency shall also mail notice of the acceptance or denial of the mortgagor's application to the mortgagee within five days of the Agency's determination. Notice shall be deemed sufficient if sent to the last known address of the mortgagee.

**SECTION 20.2.(d)** Rule Making. – Solely with respect to the adoption of procedures for the pilot program by which property owners at risk of being foreclosed upon may qualify for assistance, the Agency is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of procedures, the Agency shall:

- (1) Publish the proposed procedures in the North Carolina Register at least 30 days prior to the adoption of the final procedures.
- (2) Accept oral and written comments on the proposed procedures.
- (3) Hold at least one public hearing on the proposed procedures.

**SECTION 20.2.(e)** Any funds appropriated under Section 20A.1 of S.L. 2004-124 that have not been encumbered shall be used for the expansion of the program to additional counties as provided by this section.

**SECTION 20.2.(f)** This section applies only to the 2005-2006 fiscal year.

## **PART XX-A. INFORMATION TECHNOLOGY**

### **MULTIYEAR MAINTENANCE CONTRACTS**

**SECTION 20A.1.(a)** Notwithstanding the cash management provisions of G.S. 147-86.11, the State Controller may authorize the Office of Information Technology Services (ITS) to purchase not more than four infrastructure maintenance agreements for periods not exceeding three years where the terms of those maintenance

agreements require payment of the full purchase price at the beginning of the maintenance period. The State Controller shall not authorize the agreements authorized by this section unless all of the following conditions are met:

- (1) The proposed infrastructure maintenance agreement is entered into after June 30, 2005, and before July 1, 2007.
- (2) The State Controller receives conclusive evidence that the proposed infrastructure agreement would be more cost effective than any similar agreement that complies with G.S. 147-86.11.
- (3) The purchase of the proposed maintenance agreement complies in all other respects with applicable statutes and rules.
- (4) The proposed infrastructure maintenance agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by other reasonable means that have legally binding effect.

**SECTION 20A.1.(b)** The Office of State Budget and Management (OSBM) shall ensure that the savings from any authorized multiyear infrastructure maintenance contract will be included in ITS's calculation of rates before OSBM annually approves the proposed rates.

**SECTION 20A.1.(c)** OSBM shall report on any budget impacts resulting from the multiyear contracts and provide full justification for any authorizations granted under this section to the Chairs of the Senate and House of Representatives Appropriations Committees and to the Fiscal Research Division annually on or before May 1.

## **PART XXI. DEPARTMENT OF INSURANCE**

### **INSURANCE REGULATORY FUND TRANSFER TO GENERAL FUND**

**SECTION 21.1.** The Commissioner of Insurance shall transfer funds quarterly from the Insurance Regulatory Fund to the General Fund to repay the funds appropriated to the Department of Insurance from the General Fund for each fiscal year, plus accrued interest at a rate determined by the State Treasurer.

### **STRENGTHEN REQUIREMENTS FOR ISSUING BUILDING PERMITS**

**SECTION 21.2.** The North Carolina Code Officials Qualification Board shall take steps to ensure that building inspectors enforce the requirements of G.S. 87-14.

## **PART XXII. DEPARTMENT OF REVENUE**

### **DEPARTMENT OF REVENUE DEBT FEE FOR TAXPAYER LOCATER SERVICES AND COLLECTION**

**SECTION 22.1.(a)** G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

- (1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.
- (2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.
- (3) To pay for taxpayer locator services, not to exceed one hundred thousand dollars (\$100,000) a year.
- (4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts.
- (5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.
- (6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts."

**SECTION 22.1.(b)** G.S. 105-243.1(f) reads as rewritten:

"(f) Reports. – The Department must report semiannually to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its efforts to collect tax debts. Each report must include a breakdown of the amount and age of tax debts collected by collection agencies on contract, the amount and age of tax debts collected by the Department through warning letters, and the amount and age of tax debts otherwise collected by Department personnel. The report must itemize collections by type of tax. Each report must also include a long-term collection plan, a timeline for implementing each step of the plan, a summary of steps taken since the last report and their results, and any other data requested by the Commission or the Committee.

The Department must report by April 1, 2006, and annually thereafter, to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly on the use of the fee proceeds for collecting overdue tax debts."

## **POSITIONS FOR REVENUE TAX EVASION PROJECT**

**SECTION 22.3.** The 10 time-limited positions established in the Fuel Tax Compliance Division of the Department of Revenue for the Revenue Tax Evasion Project in S.L. 2004-124 are converted to permanent positions.

## **REPORT ON ENHANCED COMPLIANCE, ENFORCEMENT, AND COLLECTION EFFORTS**

**SECTION 22.4.** On or before April 1, 2006, the Department must report to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee on its enhanced compliance, enforcement, and collection efforts. The report must include the following:

- (1) A detailed description of enhanced compliance, enforcement, and collection programs and methodologies and a detailed accounting of additional revenues collected as a result of each of those specific programs and methodologies.
- (2) An analysis of the effectiveness and cost-efficiency of the various programs and methodologies with respect to each type of tax.
- (3) A description of efforts to coordinate these enhanced compliance, enforcement, and collection efforts with existing compliance and collection efforts and recommendations for streamlining these various efforts.
- (4) Recommendations for specific, nonbudgetary legislative actions to further enhance compliance, enforcement, and collection efforts.

## **PROPERTY TAX COMMISSION PER DIEM**

**SECTION 22.5.(a)** G.S. 105-288(d) reads as rewritten:

"(d) Expenses. – The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary ~~of two hundred dollars (\$200.00) a day~~ as provided for by the Commission when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501."

**SECTION 22.5.(b)** This section becomes effective September 1, 2005.

## **COLLECTION ASSISTANCE FEE**

**SECTION 22.6.(a)** G.S. 105-243.1(d) reads as rewritten:

"(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice required by this subsection is mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The Department may not mail the fee notice earlier than 60 days after the notice of final assessment for the tax debt was mailed to the taxpayer. The fee is collectible as part of

the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is the actual cost of collection, not to exceed twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue."

**SECTION 22.6.(b)** This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

## **PART XXIII. SECRETARY OF STATE**

### **SECRETARY OF STATE TO REASSIGN VACANT POSITION**

**SECTION 23.1.** The Secretary of State shall reassign position 3222-0000-0000-361 from the Uniform Commercial Code Division to its General Administration Division to assist with investigations of trademark violations and training for other law enforcement personnel in the State and with investigations of violations of the Charitable Solicitation Licensing Act. The Secretary shall report to the Chairs of the Appropriations Subcommittees on General Government of the Senate and House of Representatives by December 1, 2005.

## **PART XXIII-A. STATE BOARD OF ELECTIONS**

### **AMEND THE STATUTES CONCERNING THE NORTH CAROLINA PUBLIC CAMPAIGN FUND AND RELATED STATUTES**

**SECTION 23A.1.(a)** G.S. 84-34, as amended by S.L. 2005-237, reads as rewritten:

**"§ 84-34. Membership fees and list of members.**

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed three hundred dollars (\$300.00), plus a surcharge of fifty dollars (\$50.00) for the implementation of Article 22D of Chapter 163 of the General Statutes, and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars (\$30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the

secretary-treasurer on the order of the Council. The fifty-dollar (\$50.00) surcharge shall be sent on a monthly schedule to the State Board of Elections. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper."

**SECTION 23A.1.(b)** G.S. 105-41(a)(1) reads as rewritten:

"(1) An attorney-at-law. ~~In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars (\$50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.~~"

**SECTION 23A.1.(c)** G.S. 163-278.63(b) reads as rewritten:

"(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

- (1) Money from the North Carolina Candidates Financing Fund.
- (2) Designations made to the Public Campaign ~~Financing~~ Fund by individual taxpayers pursuant to G.S. 105-159.2.
- ~~(3) Any contributions made by attorneys in accordance with G.S. 105-41.~~
- (4) Public Campaign ~~Financing~~ Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.
- (5) Money ordered returned to the Public Campaign ~~Financing~~ Fund in accordance with G.S. 163-278.70.
- (6) Voluntary donations made directly to the Public Campaign ~~Financing~~ Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar (\$50.00) surcharge on attorney membership fees in G.S. 84-34."

**SECTION 23A.1.(d)** Wherever the term "Public Campaign Financing Fund" appears in the General Statutes, it shall read "Public Campaign Fund."

**SECTION 23A.1.(e)** Subsections (a), (b), and (c) of this section become effective January 1, 2006, and apply to the membership fees due for 2006. The remainder of this section is effective when it becomes law.

## **HAVA FUNDS FOR TRAINING**

**SECTION 23A.2.(a)** G.S. 163-82.28 reads as rewritten:

### **"§ 163-82.28. The HAVA Election Fund.**

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement ~~HAVA. HAVA~~ and for purposes permitted by HAVA to comply with State law."

**SECTION 23A.2.(b)** The State Board of Elections may use a portion of the funds in the HAVA Election Fund that have been allocated for the purchase of voting systems, for the 2005-2006 fiscal year, for its cost of facilitating the training and support of the voting systems utilized by the counties as required by Senate Bill 223, 2005 Regular Session.

**SECTION 23A.2.(c)** The State Board of Elections shall develop a plan for facilitating the training and support of the voting systems utilized by the counties. The State Board of Elections shall report to the Chairs of the Appropriations Committees of the Senate and the House of Representatives on its plan as well as any additional funding requirements by April 1, 2006.

**SECTION 23A.2.(d)** Subsections (b) and (c) of this section are effective only if Senate Bill 223, 2005 Regular Session, becomes law.

## **STATE BOARD OF ELECTIONS APPOINTMENTS**

**SECTION 23A.3.** G.S. 163-19 reads as rewritten:

### **"§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party. The Governor ~~shall~~ may appoint the members from a list of nominees submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest

registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor ~~shall~~ may fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by the preceding paragraph. The three nominees must be affiliated with that political party.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections."

## **PART XXIV. OFFICE OF STATE BUDGET AND MANAGEMENT**

### **NC HUMANITIES COUNCIL**

**SECTION 24.1.** The North Carolina Humanities Council shall:

- (1) By January 15, 2006, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2004-2005 program activities, objectives, and accomplishments;
  - b. State fiscal year 2004-2005 itemized expenditures and fund sources;
  - c. State fiscal year 2005-2006 planned activities, objectives, and accomplishments, including actual results through December 31, 2005; and
  - d. State fiscal year 2005-2006 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2005.



- (2) By January 15, 2007, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division the following information:
  - a. State fiscal year 2005-2006 program activities, objectives, and accomplishments;
  - b. State fiscal year 2005-2006 itemized expenditures and fund sources;
  - c. State fiscal year 2006-2007 planned activities, objectives, and accomplishments, including actual results through December 31, 2006; and
  - d. State fiscal year 2006-2007 estimated itemized expenditures and fund sources, including actual expenditures and fund sources through December 31, 2006.
- (3) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

## **PART XXV. OFFICE OF THE STATE CONTROLLER**

### **OVERPAYMENTS AUDIT**

**SECTION 25.1.(a)** During the 2005-2007 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

**SECTION 25.1.(b)** For each fiscal year of the 2005-2007 biennium, two hundred thousand dollars (\$200,000) of the funds transferred from the Special Reserve Account 24172 shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

**SECTION 25.1.(c)** All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2005-2007 biennium are transferred to the General Fund on that date.

**SECTION 25.1.(d)** Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly in the 2006 Regular Session of the 2005 General Assembly.

**SECTION 25.1.(e)** The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

## **PART XXVII. DEPARTMENT OF THE STATE TREASURER**

## **REPORT OF THE STATUS OF THE TECHNOLOGY INFRASTRUCTURE ENHANCEMENTS**

**SECTION 27.1.** The Department of State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees for the Senate and the House of Representatives on the status of the replacement of the multitude of information technology systems with an integrated system for all the retirement plans and other programs administered by the Retirement Systems Division. The Department shall report semiannually by October 1 and April 1 until the enhancements are fully implemented.

### **STAFFING ANALYSIS FOLLOW-UP**

**SECTION 27.2.(a)** The Office of State Budget and Management shall conduct semiannual follow-up analyses to the Staffing Analysis that was completed in April 2003 on the Retirement Systems Division within the Department of State Treasurer by October 1 and April 1 of each year to assure that the staffing levels remain appropriate. The semiannual analyses shall be conducted throughout the implementation of the enhancements to the information technology infrastructure within the Retirement Systems Division that were authorized by this act. The follow-up analyses shall also continue for a reasonable time after the completion of the enhancements to ensure that the staffing levels are adjusted based on the increased efficiency provided by the enhancements.

**SECTION 27.2.(b)** The Retirement Systems Division shall maintain monthly workload statistics and productivity data for the various functions within the Division. The Department of State Treasurer shall report the workload statistics and productivity data to the Fiscal Research Division and to the Office of State Budget and Management on a quarterly basis.

### **TREASURER REPORT ON STATE INVESTMENT OFFICER POSITION INCENTIVE BONUS**

**SECTION 27.3.** G.S. 147-69.3 is amended by adding a new subsection to read:

"(i1) The State Treasurer shall report the incentive bonus paid to the Chief Investment Officer to the Joint Legislative Commission on Governmental Operations by October 1 of each year."

## **PART XXVIII. DEPARTMENT OF TRANSPORTATION**

### **REMOVE GOV OPS CONSULTATION ON FEDERAL-AID ACTS**

**SECTION 28.1.** G.S. 136-44.2 reads as rewritten:

**"§ 136-44.2. Budget and appropriations.**

The Director of the Budget shall include in the "Current Operations Appropriations Bill" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance programs for that budget period for the State primary, secondary, urban, and State parks road systems. The State primary system shall include

all portions of the State highway system located outside municipal corporate limits which are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located outside municipal corporate limits that is not a part of the State primary system. The State urban system shall include all portions of the State highway system located within municipal corporate limits. The State parks system shall include all State parks roads and parking lots which are not also part of the State highway system.

All construction and maintenance programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, and ferry operations shall be enumerated in the budget.

The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. No federally eligible construction project may be funded entirely with State funds unless the Department of Transportation has first ~~consulted with~~ reported to the Joint Legislative Commission on Governmental Operations. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

The "Current Operations Appropriations Bill" shall also contain the proposed appropriations of State funds for use in each county for maintenance and construction of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the construction and maintenance of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

If the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act for the following fiscal year, the excess shall be used in accordance with this paragraph. The Director of the Budget may allocate part or all of the excess among reserves for access and public roads, for unforeseen events requiring prompt action, or for other urgent needs. The amount not allocated to any of these reserves by the Director of the Budget shall be credited to a reserve for maintenance. The Board of Transportation shall report monthly to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on the use of funds in the maintenance reserve.

The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars (\$100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban road systems are made, based upon the same proportion as is appropriated to each system."

### **TRANSPORTATION SERVICES FOR TRADE SHOWS**

**SECTION 28.2.** The Department of Transportation, from funds available for public transportation in this act, may use up to one million two hundred thousand dollars (\$1,200,000) in each year of the biennium for transportation services for annual or semiannual trade shows of international significance. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee, annually on or before March 1, on the use of these funds.

### **CASH-FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS.**

**SECTION 28.3.(a)** The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2007-2008	\$1,551.1 million
For Fiscal Year 2008-2009	\$1,593.0 million
For Fiscal Year 2009-2010	\$1,647.9 million
For Fiscal Year 2010-2011	\$1,716.1 million

**SECTION 28.3.(b)** The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2007-2008	\$1,136.9 million
For Fiscal Year 2008-2009	\$1,186.4 million
For Fiscal Year 2009-2010	\$1,229.6 million
For Fiscal Year 2010-2011	\$1,283.2 million

### **SMALL CONSTRUCTION AND CONTINGENCY FUNDS**

**SECTION 28.4.** Of the funds appropriated in this act to the Department of Transportation:

- (1) Twenty-one million dollars (\$21,000,000) shall be allocated in each fiscal year for small construction projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.

- (2) Fifteen million dollars (\$15,000,000) in fiscal year 2005-2006 and fifteen million dollars (\$15,000,000) in fiscal year 2006-2007 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

#### **USE OF EXCESS OVERWEIGHT/OVERSIZE FEES**

**SECTION 28.5.** Chapter 20 of the General Statutes is amended by adding a new section to read:

**"§ 20-119.1. Use of excess overweight and oversize fees.**

Funds generated by overweight and oversize permit fees in excess of the cost of administering the program, as determined pursuant to G.S. 20-119(e), shall be used for highway and bridge maintenance required as a result of damages caused from overweight or oversize loads."

#### **FUNDS FOR UNSAFE OR OBSOLETE FIELD FACILITIES**

**SECTION 28.6.** Of the funds appropriated in this act to the Department of Transportation, the Department may use funds not to exceed seventy-five hundredths of one percent (.75%) for maintenance and construction programs for major repair, renovation, or replacement of its field facilities that fail to meet safety standards or that are obsolete for current or future use. Prior to expending these funds, the Department shall submit its proposed budget for these expenditures to the Senate Appropriations Subcommittee on Transportation, the House of Representatives Appropriations Subcommittee on Transportation, and the Joint Legislative Transportation Oversight Committee each year.

#### **STATE USE OF NORTH CAROLINA RAILROAD DIVIDENDS**

**SECTION 28.7.** G.S. 124-5.1(a) reads as rewritten:

"(a) Notwithstanding the provisions of G.S. 136-16.6, in order to increase the capital of the North Carolina Railroad Company, any dividends of the North Carolina Railroad Company received by the State shall be applied to reduce the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the North Carolina

Railroad Company received by the State shall be used by the Department of Transportation for the improvement of the property of the North Carolina Railroad Company as recommended and approved by the Board of Directors of the North Carolina Railroad Company. The improvements may include the following project types:

- (1) Railroad and industrial track rehabilitation.
- (2) Railroad signal and grade crossing protection.
- (3) Bridge improvements.
- (4) Corridor protection.
- (5) Industrial site acquisition."

## **ANALYSIS AND APPROVAL OF RULES, POLICIES, OR GUIDELINES AFFECTING DEPARTMENT OF TRANSPORTATION PROJECTS**

**SECTION 28.8.(a)** G.S. 150B-21.4 is amended by adding a new subsection to read:

"(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1)."

**SECTION 28.8.(b)** Chapter 136 of the General Statutes is amended by adding a new section to read:

### **"§ 136-44.7C. Analysis and approval of Department of Transportation environmental policies or guidelines affecting transportation projects.**

(a) Analysis Required. – The Department of Transportation shall conduct an analysis of any proposed environmental policy or guideline adopted by the Department that affects Department of Transportation projects to determine if the policy or guideline will result in an increased cost to Department of Transportation projects.

(b) Report of Analysis; Approval of Policy or Guideline Required. – The analysis of a proposed policy or guideline required by subsection (a) of this section shall be reported to the Board of Transportation at least 30 days prior to the proposed effective date of the policy or guideline, and shall not go into effect until approved by the Board of Transportation."

## **DEPARTMENT OF TRANSPORTATION PRODUCTIVITY PILOT PROGRAMS**

**SECTION 28.9.(a)** The Department of Transportation may continue the productivity pilot programs in the road oil and bridge inspection units implemented under Section 29.3 of S.L. 2003-284. The Department of Transportation may expend up to one-half of one percent (.50%) of the budget allocation for these programs for employee incentive payments to maintain the increased efficiency and productivity under these programs.

**SECTION 28.9.(b)** The Department of Transportation may establish two additional pilot programs to test incentive pay for employees as a means of increasing and maintaining efficiency and productivity.

One of the new pilot programs shall involve the Pavement Markings Unit. The other pilot program may be selected by the Department of Transportation. Up to one-half of one percent (.50%) of the budget allocation for these programs may be used to provide employee incentive payments.

Incentive payments shall be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs implemented under this subsection shall last no more than two years.

The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee on the pilot programs developed under this subsection at least 30 days prior to their implementation.

## **DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED CONTRACTS**

**SECTION 28.10.** The Department of Transportation may implement up to two performance-based contracts for routine maintenance and operations, exclusive of resurfacing. Selection of firms to perform this work shall be made using a best-value procurement process.

Prior to any advertisement for a proposed project, the Department shall report to the Joint Legislative Transportation Oversight Committee on the contractor selection criteria to be used.

## **DEPARTMENT OF TRANSPORTATION REORGANIZATION**

**SECTION 28.11.(a)** The Secretary of Transportation shall transfer the Program Development branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the Chief Financial Officer of the Department of Transportation.

**SECTION 28.11.(b)** The Secretary of Transportation shall transfer the Transportation Planning branch, as it existed on May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

**SECTION 28.11.(c)** The Secretary of Transportation shall transfer the Project Development and Environmental Analysis branch, as it existed May 1, 2005, from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator.

**SECTION 28.11.(d)** In fiscal year 2005-2006, the Department may fill up to 196 existing or vacant positions in the Project Development and Environmental Analysis branch.

**SECTION 28.11.(e)** The Department of Transportation shall study the current labor market and shall make competitive salary offers to prospective employees for specialized positions that are difficult to fill within the Project Development and Environmental Analysis branch and make salary adjustments for current employees that are in positions that are difficult to fill within the Project Development and Environmental Analysis branch. Salaries within the branch shall be consistent with current State compensation and salary administration policies and shall fall within minimum and maximum allowable salary ranges established for positions in the branch.

**SECTION 28.11.(f)** Notwithstanding G.S. 126-4(10), or any other provisions of law to the contrary, the Department shall develop an incentive pay pilot program for employees of the Project Development and Environmental Analysis branch. This program shall utilize incentive pay as a means to recognize and reward increased efficiency and productivity, and such payments shall be based on quantifiable measures. The Department shall report to the Joint Legislative Transportation Oversight Committee on the incentive pay pilot program no later than March 30, 2006. This provision does not authorize the implementation of an incentive pay program.

#### **CONTINUING AVIATION APPROPRIATIONS**

**SECTION 28.12.** G.S. 136-16.4 reads as rewritten:

**"§ 136-16.4. Continuing aviation appropriations.**

~~There is appropriated from the General Fund to the Department of Transportation the sum of eight million four hundred thousand dollars (\$8,400,000) for fiscal year 1993-94 and the sum of eight million nine hundred thousand dollars (\$8,900,000) for fiscal year 1994-95.~~ There is appropriated from the Highway Fund to the Department of Transportation the sum of eleven million two hundred eighty-four thousand one hundred ninety-eight dollars (\$11,284,198) for fiscal year 2005-2006 and the sum of twelve million nine hundred forty-five thousand sixty-six dollars (\$12,945,066) for fiscal year 2006-2007. Each subsequent fiscal year, there is appropriated from the ~~General Fund~~ Highway Fund to the Department of Transportation the amount appropriated by this section to the Department of Transportation for the preceding fiscal year, plus or minus the percentage of the amount by which the collection of State sales and use taxes increased or decreased during the preceding fiscal year. The Department of Transportation may use funds appropriated under this section only for aviation purposes."

#### **TRANSITIONAL TRAINING FOR MOTOR CARRIER ENFORCEMENT OFFICERS**

**SECTION 28.13.** The North Carolina State Highway Patrol is authorized to complete transitional training for all Motor Carrier Enforcement Officers to become State Troopers. The State Highway Patrol may fill any Motor Carrier Enforcement Officer vacancies necessary to ensure the mission of the State Highway Patrol to



enforce the Motor Carrier Laws. This transition from Motor Carrier Enforcement Officer to State Trooper shall not relieve the State Highway Patrol of the responsibility of ensuring that all Motor Carrier Enforcement Officer positions and any positions that are transitioned to State Trooper are dedicated to motor carrier enforcement duties including, but not limited to, permanent weigh station operations, motor carrier inspections, and secondary road checking stations and enforcement.

**DEPARTMENT OF TRANSPORTATION AUTHORITY TO PROVIDE WAY-FINDING SIGNS FOR THE ROANOKE VOYAGES CORRIDOR COMMISSION AND THE BLUE RIDGE NATIONAL HERITAGE AREA PARTNERSHIP**

**SECTION 28.14.(a)** Chapter 1194 of the 1981 Session Laws is amended by adding a new section that reads:

"Sec. 7.2. At the request of the Roanoke Voyages Corridor Commission, the Department of Transportation may manufacture and install, on Roanoke Island and up to 30 miles off the island, way-finding signs that, by color, design, and lettering, do not comply with normal transportation signage standards. These signs shall be used to identify and give directions to historic, educational, and cultural attractions on the island. The Department of Transportation shall not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition."

**SECTION 28.14.(b)** At the request of the Blue Ridge National Heritage Area Partnership, as established by Public Law 108-108, Title I, Section 140(d)(3), the Department of Transportation may manufacture and install way-finding signs that, by color, design, and lettering, do not comply with normal transportation signage standards. Signage throughout the 25-county area, as defined in Public Law 108-108, Title I, Section 140(d)(2), of the Blue Ridge National Heritage Area shall be used to identify and give directions to historic, educational, and cultural attractions. The Department of Transportation shall not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition.

**REVENUE TAX EVASION PROJECT**

**SECTION 28.15.** Of funds appropriated to Highway Trust Fund Administration, the sum of five hundred forty-eight thousand six hundred thirty-three dollars (\$548,633) for the 2005-2006 fiscal year and the sum of four hundred seventy thousand seven hundred one dollars (\$470,701) for the 2006-2007 fiscal year shall be used to establish and support nine positions in the Department of Revenue, Motor Fuels Tax Division, to fully implement the Revenue Tax Evasion Project.

**VISITOR CENTER FUNDS**

**SECTION 28.16.** G.S. 20-79.7(c)(2) reads as rewritten:

"(c) Use of Funds in Special Registration Plate Account. –

...

(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this

subsection, there is annually appropriated from the Special Registration Plate Account the sum of ~~nine hundred thousand dollars (\$900,000)~~ one million dollars (\$1,000,000) to provide operating assistance for the Visitor Centers:

- a. on U.S. Highway 17 in Camden County, (\$100,000);
- b. on U.S. Highway 17 in Brunswick County, (\$100,000);
- c. on U.S. Highway 441 in Macon County, (\$100,000);
- d. in the Town of Boone, Watauga County, (\$100,000);
- e. on U.S. Highway 29 in Caswell County, (\$100,000);
- f. on U.S. Highway 70 in Carteret County, (\$100,000);
- g. on U.S. Highway 64 in Tyrrell County, (\$100,000);
- h. at the intersection of U.S. Highway 701 and N.C. 904 in Columbus County, (\$100,000); ~~and~~
- i. on U.S. Highway 221 in McDowell County, ~~(\$100,000).~~(\$100,000); and
- j. on Staton Road in Transylvania County, (\$100,000)."

#### **MODIFY GLOBAL TRANSPARK DEBT**

**SECTION 28.17.** G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144 and Section 2 of S.L. 2005-201, reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- ...
- (11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than ~~August 31, 2005.~~ October 1, 2007. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

#### **BEAVER DAMAGE CONTROL PROGRAM FUNDS**

**SECTION 28.18.** Of funds available to the Department of Transportation for maintenance, the sum of three hundred thousand dollars (\$300,000) for the 2005-2006

fiscal year and the sum of three hundred thousand dollars (\$300,000) for the 2006-2007 fiscal year shall be used to provide the State share necessary to support the beaver damage control program established in G.S. 113-291.10, provided the sum of at least twenty-five thousand dollars (\$25,000) in federal funds is available each fiscal year of the biennium to provide the federal share.

#### **REPORT ON STORMWATER PILOT PROJECT**

**SECTION 28.19.** The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by August 1, 2005, on its plan to clean up ocean outfalls in accordance with Section 30.20 of S.L. 2004-124.

#### **CAPITAL IMPROVEMENTS TO TRANSPORTATION MUSEUM**

**SECTION 28.20.** The Secretary of Transportation shall make capital improvements to the Back Shop at the North Carolina Transportation Museum. The Secretary may spend up to two million dollars (\$2,000,000) of funds available in fiscal year 2005-2006 and may spend up to three million dollars (\$3,000,000) of funds available in fiscal year 2006-2007 for this purpose.

#### **ESTABLISHING TOLLWAYS ON FEDERALLY FUNDED HIGHWAYS DESIGNATED AS INTERSTATES**

**SECTION 28.21.(a)** The North Carolina Department of Transportation shall apply to the United States Department of Transportation for a permit to allow tolling on established interstate highways in North Carolina. The Department shall set Interstate 95 as the priority project when applying for any permits.

**SECTION 28.21.(b)** Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-89.198. Authority to toll existing interstate highways.**

(a) General. – Notwithstanding any other provision of this Article, the Authority may collect tolls on any existing interstate highway for which the United States Department of Transportation has granted permission by permit, or any other lawful means, to do so. The revenue generated from the collected tolls shall be used by the Authority to repair and maintain the interstate on which the tolls were collected. These revenues shall not be used to repair, maintain, or upgrade any State primary or secondary road adjacent to or connected with the interstate highways.

(b) Method. – The Authority shall establish toll locations on the permitted interstate highway in accordance with federal guidelines. Toll locations shall be erected at or near the borders of the State and at such other locations that are not impracticable, unfeasible, or that would result in an unsafe or hazardous condition.

(c) Severability. – If any provision of this section or its application is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable."

#### **STUDY ONLINE DEALER REGISTRATION ENHANCEMENT**

**SECTION 28.22.(a)** The Joint Legislative Transportation Oversight Committee shall study the feasibility and cost of enhancing the Online Dealer Registration System to allow motor vehicle dealers the option of performing titling and registration services on-site. This study shall determine whether the Division of Motor Vehicles or some third-party vendor would be better able to provide these services including crash data on each vehicle being registered. The Joint Legislative Transportation Oversight Committee may hire an outside consultant in conducting this study.

**SECTION 28.22.(b)** Of the funds appropriated by this act for the enhancement of the Online Dealer Registration System, no expenditure shall be made before November 1, 2005. Not less than 30 days prior to any expenditure being made, the Division shall report to the Joint Legislative Transportation Oversight Committee a detailed plan outlining the planned expenditures, expected results, completion date, and the proposed date of implementing the enhanced system.

### **MOVING AHEAD PROJECTS**

**SECTION 28.23.(a)** In addition to the planned expenditures of one hundred fifty-four million dollars (\$154,000,000) in the 2005-2006 fiscal year for the construction of highway projects authorized by G.S. 136-176(a3)(1), as amended by Section 30.3(b) of S.L. 2004-124, the Department of Transportation may expend an additional forty-four million dollars (\$44,000,000) during the 2005-2006 fiscal year to accelerate the construction of those highway projects. Project selection pursuant to this section shall be based on identified and documented need. Funds expended pursuant to this section shall be distributed in accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow. Nothing in this section shall be construed to increase the total amount of funds that may be obligated for these projects pursuant to G.S. 136-176(a3), as amended by Section 30.3(b) of S.L. 2004-124.

**SECTION 28.23.(b)** The Department shall design and construct an extension of an existing roadway facility in Wake County linking U.S. Highway 70 and S.R. 1839, Leesville Road. The Department may enter into a Public-Private, municipal agreement, or other appropriate method to fund and construct this facility.

**SECTION 28.23.(c)** Of the increased funds for general maintenance appropriated to the Department of Transportation by this act, up to six million dollars (\$6,000,000) shall be used for road improvements to Lawyers Road between Highway 51 and Stevens Mill Road, located in Mecklenburg and Union Counties. Improvements shall include, but are not limited to:

- (1) Widening on Lawyers Road to four lanes between Bain School Road and Stevens Mill Road.
- (2) Construction of turn lanes along Lawyers Road, Bain School Road, Thompson Road, Allen Black Road, and Stevens Mill Road.
- (3) Intersection realignments and improvements at Thompson Road, Bain School Road, and Lawyers Road.

- (4) Traffic signalization along Lawyers Road.

**SECTION 28.23.(d)** The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before October 1, 2005, on its intended use of funds pursuant to subsection (a) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2006, on its actual current and intended future use of funds pursuant to subsection (a) of this section.

#### **ESTABLISH PILOT PROGRAM FOR MOTOR CARRIER ENFORCEMENT CIVILIAN INSPECTION SUPPORT TEAMS**

**SECTION 28.24.(a)** The State Highway Patrol Motor Carrier Enforcement Section shall establish a pilot program comprised of two civilian data collection teams to supplement portable weight and inspection operations and to study the potential for increasing the effectiveness of Motor Carrier Enforcement Officers operating remotely from permanent weigh station facilities. Each team shall consist of two civilian members and shall be provided all necessary equipment to supplement the portable weight and inspection operations of the Motor Carrier Enforcement Section of the State Highway Patrol.

**SECTION 28.24.(b)** The State Highway Patrol shall report the effectiveness of the Civilian Inspection Support Team pilot program and make any recommendations which may increase the effectiveness of Motor Carrier Enforcement activities on bypass routes and areas remote from permanent weigh station facilities to the Joint Legislative Transportation Oversight Committee by August 1, 2006.

#### **DEPARTMENT OF TRANSPORTATION TO SHARE REAL-TIME WEIGH-IN-MOTION DATA AND PERIODIC SUMMARIES OF DATA COLLECTED AT EXISTING DOT WEIGH-IN-MOTION SITES**

**SECTION 28.25.(a)** The Department of Transportation shall provide the State Highway Patrol, Motor Carrier Enforcement Section, access to all real-time data collection efforts at all existing weigh-in-motion sites by October 1, 2005, to include but not limited to:

- (1) Installation of wireless access points at each site.
- (2) Providing periodic summaries of collected data to assist in monitoring overweight vehicle travel volumes and habits.
- (3) Acquisition of any necessary software to allow interfacing with the existing systems.
- (4) Access to any new facilities constructed on DOT rights-of-way.

**SECTION 28.25.(b)** The State Highway Patrol shall report the effectiveness of the access to weigh-in-motion sites, the collected data, and use of these sites as a vehicle weight screening technology to increase the effectiveness of Motor Carrier Enforcement activities to the Joint Legislative Transportation Oversight Committee by August 1, 2006.

#### **PRELIMINARY ASSESSMENT OF PORT DEVELOPMENT AND RAIL SUPPORT SERVICES**

**SECTION 28.26.(a)** The Rail Division of the Department of Transportation, in association with the State Ports Authority, may, from available funding and in an amount not to exceed twenty-five thousand dollars (\$25,000), contract with a third party to complete a preliminary assessment of the need for the State to:

- (1) Create a deep channel port.
- (2) Create an inland ocean cargo terminal.
- (3) Create a logistics operations center.
- (4) Identify collateral rail requirements to serve these functions.

**SECTION 28.26.(b)** The Rail Division shall report, in electronic and written formats, the assessment to the Joint Legislative Transportation Oversight Committee before May 1, 2006.

### **FUNDS FOR ECONOMIC DEVELOPMENT, SPOT SAFETY, AND TRANSPORTATION IMPROVEMENT PROGRAM PROJECTS**

**SECTION 28.27.** Of the funds appropriated by this act to the Department of Transportation in fiscal year 2005-2006, twenty-eight million dollars (\$28,000,000) shall be allocated equally among the 14 Highway Divisions for economic development transportation projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Board of Transportation. Funds in each Division not needed for economic development projects shall be used on spot safety needs to enhance safety, reduce congestion, improve traffic flow, reduce accidents, and for system preservation. Any remaining funds in each Division shall be used on Transportation Improvement Program projects.

### **FRIENDS OF THE N.C. MARITIME MUSEUM/TALL SHIPS EVENT**

**SECTION 28.28.** Of the funds available to the Department of Transportation, up to one million six hundred fifty thousand dollars (\$1,650,000) shall be used during fiscal year 2005-2006 to enhance transportation infrastructure for the Friends of the N.C. Maritime Museum/Tall Ships Event in Beaufort.

## **PART XXIX. SALARIES AND EMPLOYEE BENEFITS**

### **GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES**

**SECTION 29.1.(a)** Effective July 1, 2005, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty one thousand three hundred ninety one dollars (\$121,391)~~ one hundred twenty-three thousand eight hundred nineteen dollars (\$123,819) annually, payable monthly."

**SECTION 29.1.(b)** Effective July 1, 2005, the annual salaries for the members of the Council of State, payable monthly, for the 2005-2006 and 2006-2007 fiscal years are:

Council of State

Annual Salary

Lieutenant Governor	\$109,279
Attorney General	109,279
Secretary of State	109,279
State Treasurer	109,279
State Auditor	109,279
Superintendent of Public Instruction	109,279
Agriculture Commissioner	109,279
Insurance Commissioner	109,279
Labor Commissioner	109,279

**NONELECTED DEPARTMENT HEADS/SALARY INCREASES**

**SECTION 29.2.** In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the 2005-2006 and 2006-2007 fiscal years are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>
Secretary of Administration	\$106,765
Secretary of Correction	106,765
Secretary of Crime Control and Public Safety	106,765
Secretary of Cultural Resources	106,765
Secretary of Commerce	106,765
Secretary of Environment and Natural Resources	106,765
Secretary of Health and Human Services	106,765
Secretary of Juvenile Justice and Delinquency	106,765
Secretary of Revenue	106,765
Secretary of Transportation	106,765

**CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES**

**SECTION 29.3.** The annual salaries, payable monthly, for the 2005-2006 and 2006-2007 fiscal years for the following executive branch officials are:

<u>Executive Branch Officials</u>	<u>Annual Salary</u>
Chairman, Alcoholic Beverage Control Commission	\$97,175
State Controller	135,997
Commissioner of Motor Vehicles	97,175
Commissioner of Banks	109,279
Chairman, Employment Security Commission	133,161
State Personnel Director	106,765
Chairman, Parole Commission	88,733
Members of the Parole Commission	40,960
Chairman, Utilities Commission	121,701
Members of the Utilities Commission	109,279
Executive Director, Agency for Public Telecommunications	81,921
Director, Museum of Art	99,573

Executive Director, North Carolina Agricultural Finance Authority	94,587
State Chief Information Officer	135,915

**JUDICIAL BRANCH OFFICIALS/SALARY INCREASES**

**SECTION 29.4.(a)** The annual salaries, payable monthly, for specified Judicial Branch officials for the 2005-2006 and 2006-2007 fiscal years are:

<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
Chief Justice, Supreme Court	\$123,819
Associate Justice, Supreme Court	120,583
Chief Judge, Court of Appeals	117,568
Judge, Court of Appeals	115,559
Judge, Senior Regular Resident Superior Court	112,419
Judge, Superior Court	109,279
Chief Judge, District Court	99,231
Judge, District Court	96,091
Administrative Officer of the Courts	112,419
Assistant Administrative Officer of the Courts	102,684

**SECTION 29.4.(b)** The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts or the Commission on Indigent Defense Services, respectively, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed sixty-two thousand nine hundred thirty dollars (\$62,930), and the minimum salary of any assistant district attorney or assistant public defender is at least thirty-two thousand eight hundred eighty-five dollars (\$32,885), effective July 1, 2005.

**SECTION 29.4.(c)** Effective July 1, 2005, the annual salaries of permanent, full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by the greater of eight hundred fifty dollars (\$850.00) or two percent (2%).

**SECTION 29.4.(d)** Effective July 1, 2005, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by pro rata amounts of eight hundred fifty dollars (\$850.00) or two percent (2%), whichever is greater.

**CLERK OF SUPERIOR COURT/SALARY INCREASES**

**SECTION 29.5.** Effective July 1, 2005, G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
------------	---------------



Less than 100,000	<del>\$71,659</del>	<u>\$73,092</u>
100,000 to 149,999	<del>80,413</del>	<u>82,021</u>
150,000 to 249,999	<del>89,169</del>	<u>90,952</u>
250,000 and above	<del>97,925</del>	<u>99,884</u>

The salary schedule in this subsection is intended to represent the following approximate percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

#### **ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASES**

**SECTION 29.6.** Effective July 1, 2005, G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
Minimum	<del>\$27,515</del> <u>\$28,365</u>
Maximum	<del>47,626</del> <u>48,579</u>
Deputy Clerks	Annual Salary
Minimum	<del>\$23,565</del> <u>\$24,415</u>
Maximum	<del>36,934</del> <u>37,784</u> ."

#### **MAGISTRATES' SALARY INCREASES**

**SECTION 29.7.(a)** Effective July 1, 2005, G.S. 7A-171.1(a) reads as rewritten:

"(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate.

- (1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every

four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

**Table of Salaries of Full-Time Magistrates**

Step Level	Annual Salary	
Entry Rate	<del>\$27,889</del>	<u>\$28,739</u>
Step 1	<del>30,525</del>	<u>31,375</u>
Step 2	<del>33,393</del>	<u>34,243</u>
Step 3	<del>36,523</del>	<u>37,373</u>
Step 4	<del>39,952</del>	<u>40,802</u>
Step 5	<del>43,789</del>	<u>44,665</u>
Step 6	<del>48,036.</del>	<u>48,997.</u>

- (2) A part-time magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.
- (3) Notwithstanding any other provision of this subsection, a magistrate who is licensed to practice law in North Carolina or any other state shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4."

**SECTION 29.7.(b)** Effective July 1, 2005, G.S. 7A-171.1(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:

- (1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	<del>\$22,325</del>	<u>\$23,175</u>
1 or more but less than 3 years of service	<del>23,389</del>	<u>24,239</u>
3 or more but less than 5 years of service	<del>25,530.</del>	<u>26,380.</u>

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a).

- (2) The salaries of magistrates who on June 30, 1994, were paid at a salary level of five or more years of service shall be based on the rates set out in subsection (a) as follows:

Salary Level on June 30, 1994	Salary Level on July 1, 1994
5 or more but less than 7 years of service	Entry Rate
7 or more but less than 9 years of service	Step 1
9 or more but less than 11 years of service	Step 2
11 or more years of service	Step 3

Thereafter, their salaries shall be set in accordance with the provisions in subsection (a).

- (3) The salaries of magistrates who are licensed to practice law in North Carolina shall be adjusted to the annual salary provided in the table in subsection (a) as Step 4, and, thereafter, their salaries shall be set in accordance with the provisions in subsection (a).
- (4) The salaries of "part-time magistrates" shall be set under the formula set out in subdivision (2) of subsection (a) but according to the rates set out in this subsection."

## **GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES**

**SECTION 29.8.** Effective July 1, 2005, G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~ninety thousand five hundred fourteen dollars (\$90,514)~~ninety-two thousand three hundred twenty-four dollars (\$92,324) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

## **SERGEANTS-AT-ARMS AND READING CLERKS**

**SECTION 29.9.** Effective July 1, 2005, G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~three hundred eleven dollars (\$311.00)~~three hundred twenty-seven dollars (\$327.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

## **LEGISLATIVE EMPLOYEES**

**SECTION 29.10.** Effective July 1, 2005, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 2005-2006 by the greater of eight hundred fifty dollars (\$850.00) or two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32.

#### **COMMUNITY COLLEGE PERSONNEL/SALARY INCREASES**

**SECTION 29.11.** The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide an annual salary increase of the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all community college employees supported by State funds.

#### **UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA COMPENSATION**

**SECTION 29.12.(a)** The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an annual salary increase of the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). The flat dollar increase of eight hundred fifty dollars (\$850.00) shall be made to all employees whose annual salary is less than or equal to forty-two thousand five hundred dollars (\$42,500). The percentage annual salary increase of two percent (2%) authorized by this section shall be made on an aggregated average basis, and these funds shall be allocated to individuals whose annual salary is greater than forty-two thousand five hundred dollars (\$42,500), according to the rules adopted by the Board of Governors of The University of North Carolina or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

**SECTION 29.12.(b)** The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increases, created in this act for fiscal years 2005-2006 and 2006-2007, to provide an average annual salary increase of two and twenty-four hundredths percent (2.24%), including funds for the employer's retirement and social security contributions, commencing July 1, 2005, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

## **MOST STATE EMPLOYEES/SALARY INCREASES**

**SECTION 29.13.(a)** The salaries in effect June 30, 2005, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act and who are paid from the General Fund or the Highway Fund shall be increased, effective July 1, 2005, by the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), unless otherwise provided by this act.

**SECTION 29.13.(b)** Except as otherwise provided in this act, the fiscal year 2005-2006 salaries for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by the greater of eight hundred fifty dollars (\$850.00) or two percent (2%), effective July 1, 2005, unless otherwise provided by this act.

**SECTION 29.13.(c)** The salaries in effect for fiscal year 2005-2006 for all permanent part-time State employees shall be increased, effective July 1, 2005, by pro rata amounts of eight hundred fifty dollars (\$850.00) or two percent (2%), whichever is greater.

**SECTION 29.13.(d)** The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase, effective July 1, 2005, in accordance with subsection (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, for the permanent full-time and part-time employees of the agency, provided the employing agency elects to make available the necessary funds.

**SECTION 29.13.(e)** Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the greater of the eight hundred fifty dollar (\$850.00) or two percent (2%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2005.

## **ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES**

**SECTION 29.14.(a)** Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

**SECTION 29.14.(b)** The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

**SECTION 29.14.(c)** The salary increases provided in this act are to be effective July 1, 2005, and do not apply to persons separated from State service due to

resignation, dismissal, reduction in force, death, or retirement, or whose last workday is prior to July 1, 2005.

Payroll checks issued to employees after July 1, 2005, which represent payment of services provided prior to July 1, 2005, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

**SECTION 29.14.(d)** The Director of the Budget shall transfer from the Reserve for Compensation Increases in this act for fiscal year 2005-2006 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

**SECTION 29.14.(e)** Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

**SECTION 29.14.(f)** Permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the eight hundred fifty dollars (\$850.00) or two percent (2%) annual increase provided by this act, whichever is greater.

#### **SPECIAL ANNUAL LEAVE BONUS**

**SECTION 29.14A.(a)** Except as provided by subsection (b) of this section, any person (i) who is a full-time permanent employee of the State, a community college institution, or a local board of education on September 1, 2005, and (ii) who is eligible to earn annual leave shall have a one-time additional five days of annual leave credited on that date. The additional leave shall be accounted for either separately or together with the leave provided by Section 28.3A of S.L. 2002-126 and by Section 30.12B(a) of S.L. 2003-284, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that may be carried forward. Part-time permanent employees shall receive a pro rata amount of the five days.

**SECTION 29.14A.(b)** The following persons are not eligible to receive the special annual leave bonus authorized by this section:

- (1) Any employee or officer who does not earn annual leave.
- (2) Any public school employee or State employee paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

#### **SALARY ADJUSTMENT FUND**

**SECTION 29.15.(a)** Any remaining appropriations in the Reserve for Compensation Increases authorized for employee salary increases not required for that purpose may be used to supplement the Salary Adjustment Fund.

**SECTION 29.15.(b)** Funds appropriated or otherwise transferred to the Salary Adjustment Fund by this act or any other provision of law shall be used to fund agency requests for the following purposes:

- (1) Salary range revisions to provide competitive salary rates for affected job classifications in response to changes in labor market salary rates

as documented through data collection and analysis according to accepted human resource professional practices and standards.

- (2) Reallocation of positions to higher-level job classifications to compensate employees for more difficult duties at competitive salary rates as documented through data collection and analysis according to accepted human resource professional practices and standards.

Priority funding shall be given to those salary range revisions previously approved by the State Personnel Commission and reallocations previously approved by the Office of State Personnel or designee.

**SECTION 29.15.(c)** The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to transferring any salary adjustment funds for any State agency.

**SECTION 29.15.(d)** The Director of the Budget may transfer to General Fund budget codes from the General Fund Salary Adjustment Fund and may transfer to Highway Fund budget codes from the Highway Fund Salary Adjustment Fund amounts required to support salary adjustments authorized by this section.

**SECTION 29.15.(e)** The Judicial Department is eligible for the funding authorized in subsection (a) of this section.

## **TEMPORARY SALES TAX TRANSFER FOR WILDLIFE RESOURCES COMMISSION SALARY INCREASES**

**SECTION 29.16.** For the 2005-2006 and 2006-2007 fiscal years, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund to fund the cost of any legislative salary increase for employees of the Wildlife Resources Commission.

## **STATE AGENCY TEACHERS' COMPENSATION**

**SECTION 29.17.** Funds in the Reserve for Compensation Increases shall be used for experience step increases for employees of schools operated by the Department of Health and Human Services, the Department of Correction, or the Department of Juvenile Justice and Delinquency Prevention, who are paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

## **STATE GOVERNMENT EMPLOYMENT FAIR MINIMUM WAGE**

**SECTION 29.18.(a)** All permanent, full-time employees subject to the State Personnel Act shall be paid a minimum salary of at least twenty thousand one hundred twelve dollars (\$20,112) per year. Permanent, full-time employees subject to the State Personnel Act working on a schedule requiring less than 12 months' service per year shall be paid the minimum salary pro rata.

**SECTION 29.18.(b)** In order to lessen salary compression and potential pay inequities, State agencies, departments, and institutions, and The University of North Carolina may, when increasing salaries pursuant to this section, make adjustments to the

salaries of supervisors and other employees who have, when considering classification, significantly more experience and length of service compared to the employees receiving this pay increase. These salary compression and pay equity determinations shall be made in consultation with the Office of State Personnel.

Of the funds appropriated in this act from the General Fund to the Reserve for Compensation Increases, the Office of State Budget and Management shall use funds in an amount not to exceed seven hundred fifty thousand dollars (\$750,000) for the 2005-2006 fiscal year and not to exceed seven hundred fifty thousand dollars (\$750,000) for the 2006-2007 fiscal year to implement this subsection. The Director of the Budget shall consult with the Joint Legislative Commission on Governmental Operations prior to the transfer of any funds pursuant to this subsection.

**SECTION 29.18.(c)** The fair minimum wage salary adjustment provided by this section shall be calculated and awarded after any across-the-board salary increases authorized by this act.

### **SALARY SUPPLEMENTS FOR PERSONNEL EMPLOYED IN CERTAIN STATE AGENCIES**

**SECTION 29.19.(a)** G.S. 143B-146.21 is amended by adding a new subsection to read:

"(e) The Secretary of Health and Human Services, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed in the programs operated by the Department of Health and Human Services and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement".

**SECTION 29.19.(b)** G.S. 143B-516(b) is amended by adding the following new subdivision to read:

"(b) The Secretary shall have the following powers and duties:

...

(17a) Set, in consultation with the Office of State Personnel, the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are employed at juvenile facilities and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subdivision shall be construed to include "merit pay" under the term "salary supplement".

...."



**SECTION 29.19.(c)** G.S. 148-22.1 is amended by adding a new subsection to read:

"(c) The Secretary of Correction, in consultation with the Office of State Personnel, shall set the salary supplement paid to teachers, instructional support personnel, and school-based administrators who are Division of Prison employees and are licensed by the State Board of Education. The salary supplement shall be at least five percent (5%), but not more than the percentage supplement they would receive if they were employed in the local school administrative unit where the job site is located. These salary supplements shall not be paid to central office staff. Nothing in this subsection shall be construed to include "merit pay" under the term "salary supplement".

**INDUSTRIAL COMMISSION SALARIES/IN-RANGE SALARY  
ADJUSTMENTS**

**SECTION 29.20.(a)** Of the revenue generated by implementing a fee for the required review of Form 21 and Form 26 Agreements, the Industrial Commission may use up to one hundred seventy-one thousand nine hundred dollars (\$171,900) in each year of the 2005-2007 biennium to provide the salary adjustments authorized by subsection (b) of this section and in-range salary adjustments for Industrial Commission staff.

**SECTION 29.20.(b)** Effective July 1, 2005, G.S. 97-78 reads as rewritten:

**"§ 97-78. Salaries and expenses; administrator, executive secretary, deputy commissioners, and other staff assistance; annual report.**

(a) The salary of each commissioner shall be the same as that fixed from time to time for district attorneys except that the commissioner designated as chair shall receive one thousand five hundred dollars (\$1,500) additional per annum.

(b) The Commission may appoint an administrator whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System. The Commission may appoint an executive secretary whose duties shall be prescribed by the Commission, and who shall be subject to the State Personnel System and who, upon entering upon his duties, shall give bond in such sum as may be fixed by the Commission. The Commission may also employ such clerical or other assistance as it may deem necessary, and fix the compensation of its staff, except that the salaries of the administrator and the executive secretary shall be fixed by subsection (b1) of this section. The compensation of Commission staff shall be in keeping with the compensation paid to the persons employed to do similar work in other State departments.

(b1) The salary of the administrator shall be ninety percent (90%) of the salary of a commissioner. The salary of the executive secretary shall be ~~eighty percent (80%)~~ ninety percent (90%) of the salary of a commissioner. ~~In lieu of merit and other incremental raises, the administrator and the executive secretary shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.~~

(b2) The Chairman of the Industrial Commission shall designate one deputy commissioner as chief deputy commissioner. The salary of the chief deputy commissioner shall be ninety percent (90%) of the salary of a commissioner.

(b3) The salary of deputy commissioners shall be based upon years of experience as a deputy commissioner as follows:

- (1) Seventy-five percent (75%) of the salary of a commissioner, with three years of experience or less.
- (2) Seventy-seven percent (77%) of the salary of a commissioner, with more than three but less than seven years of experience.
- (3) Eighty percent (80%) of the salary of a commissioner, with seven or more but less than 10 years of experience.
- (4) Eighty-three percent (83%) of the salary of a commissioner, with 10 or more but less than 12 years of experience.
- (5) Eighty-five percent (85%) of the salary of a commissioner, with 12 or more years experience.

(b4) In lieu of merit and other incremental raises, the administrator, executive secretary, chief deputy commissioner, and deputy commissioners shall receive longevity pay on the same basis as is provided to other employees subject to the State Personnel Act.

(c) The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission, but such expenses shall be certified by the person who incurred the same, and shall be approved by the chairman of the Commission before payment is made.

(d) All salaries and expenses of the Commission shall be audited and paid out of the State treasury, in the manner prescribed for similar expenses in other departments or branches of the State service, and to defray such salaries and expenses a sufficient appropriation shall be made under the General Appropriation Act as made to other departments, commissions and agencies of the State government.

(e) The Commission shall publish annually for free distribution a report of the administration of this Article, together with such recommendations as the Commission deems advisable."

## **ESC CHAIRMAN PROSPECTIVE SALARY CHANGE**

**SECTION 29.20A.(a)** Effective upon the appointment of the next Chairman of the Employment Security Commission of North Carolina, G.S. 96-3(c) reads as rewritten:

"(c) Salaries. – The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be the same as the salary fixed by the General Assembly in the Current Operations Appropriations Act; ~~Act for the Secretary of Commerce,~~ and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary

time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund."

**SECTION 29.20A.(b)** Effective September 1, 2005, and continuing until the appointment of the next Chairman of the Employment Security Commission of North Carolina, G.S. 96-3(c) reads as rewritten:

"(c) Salaries. – The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the General Assembly in the Current Operations Appropriations Act; and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund. Notwithstanding G.S. 138-4, the chairman of the Employment Security Commission shall not accrue longevity pay."

#### **COASTAL MANAGEMENT DIVISION SALARY INCREASES**

**SECTION 29.21.** The Department of Environment and Natural Resources is authorized to, and shall, provide to the employees of the Division of Coastal Management an increase in annual salary of ten percent (10%). This increase shall be in addition to any other increase authorized by this act.

#### **SALARY INCREASES FOR AGRICULTURAL PROGRAM EMPLOYEES**

**SECTION 29.22.** Of the funds appropriated in this act to the Board of Governors of The University of North Carolina, the sum of four million dollars (\$4,000,000) for the 2005-2006 fiscal year and the sum of four million dollars (\$4,000,000) for the 2006-2007 fiscal year shall be allocated and used as follows:

- (1) \$3,700,000 in each year to support salary increases for Agricultural Program employees of North Carolina State University who are exempt from the State Personnel Act.
- (2) \$300,000 in each year to support salary increases for Agricultural Program employees of North Carolina Agricultural and Technical State University who are exempt from the State Personnel Act.

These funds shall be allocated to individuals according to rules adopted by the Board of Governors of The University of North Carolina and may not be used for any other purpose other than for salary increases and the necessary employer contributions provided by this section.

#### **RESOURCE PROSECUTOR LONGEVITY**

**SECTION 29.23A.** G.S. 7A-65(d) reads as rewritten:

"(d) In lieu of merit and other increment raises paid to regular State employees, an assistant district attorney shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as an assistant district attorney, district attorney, resource prosecutor, public defender, appellate defender, assistant public or appellate defender, justice or judge of the General Court of Justice, or clerk of superior court. For purposes of this subsection, "resource prosecutor" means a former assistant district attorney who has left the employment of the district attorney's office to serve in a specific, time-limited position with the Conference of District Attorneys."

### **LONGEVITY PAY/CLERKS OF SUPERIOR COURT**

**SECTION 29.23B.** G.S. 7A-101(c) reads as rewritten:

"(c) In lieu of merit and other increment raises paid to regular State employees, a clerk of superior court shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the clerk's annual salary payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. Service shall mean service in the elective position of clerk of superior court, as an assistant clerk of court and as a supervisor of clerks of superior court with the Administrative Office of the Courts and shall not include service as a deputy or acting clerk. Service shall also mean service as a ~~justice or judge~~ justice, judge, or magistrate of the General Court of Justice or as a district attorney."

### **SALARY-RELATED CONTRIBUTIONS/EMPLOYER**

**SECTION 29.24.(a)** Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income benefits.

**SECTION 29.24.(b)** Effective July 1, 2005, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2005-2006 fiscal year are: (i) six and eighty-two hundredths percent

(6.82%) – Teachers and State Employees; (ii) eleven and eighty-two hundredths percent (11.82%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen-hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

**SECTION 29.24.(c)** Effective July 1, 2006, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2006-2007 fiscal year are: (i) six and eighty-two hundredths percent (6.82%) – Teachers and State Employees; (ii) eleven and eighty-two hundredths percent (11.82%) – State Law Enforcement Officers; (iii) eleven and sixteen hundredths percent (11.16%) – University Employees' Optional Retirement System; (iv) eleven and sixteen hundredths percent (11.16%) – Community College Optional Retirement Program; (v) sixteen and thirty-nine hundredths percent (16.39%) – Consolidated Judicial Retirement System; and (vi) three and eight-tenths percent (3.8%) – Legislative Retirement System. Each of the foregoing contribution rates includes three and eight-tenths percent (3.8%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income.

**SECTION 29.24.(d)** The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2005-2006 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – two thousand eight hundred fifty-three dollars (\$2,853) and (ii) non-Medicare-eligible employees and retirees – three thousand seven hundred forty-eight dollars (\$3,748).

**SECTION 29.24.(e)** The maximum annual employer contributions, payable monthly, by the State for each covered employee or retiree for the 2006-2007 fiscal year to the Teachers' and State Employees' Comprehensive Major Medical Plan are: (i) Medicare-eligible employees and retirees – two thousand nine hundred thirty-four dollars (\$2,934) and (ii) non-Medicare-eligible employees and retirees – three thousand eight hundred fifty-four dollars (\$3,854).

**PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, THE LOCAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM**

**SECTION 29.25.(a)** G.S. 135-5 is amended by adding a new subsection to read:

"(nnn) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

**SECTION 29.25.(b)** G.S. 135-65 is amended by adding a new subsection to read:

"(z) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

**SECTION 29.25.(c)** G.S. 120-4.22A is amended by adding a new subsection to read:

"(t) In accordance with subsection (a) of this section, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2005, shall be increased by two percent (2%) of the allowance payable on June 1, 2005. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2005, but before June 30, 2005, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 2005, and June 30, 2005."

**SECTION 29.25.(d)** G.S. 128-27 is amended by adding a new subsection to read:

"(ggg) From and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2004, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 2005, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 2005, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2004, but before June 30, 2005, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board

of Trustees based upon the number of months that a retirement allowance was paid between July 1, 2004, and June 30, 2005."

**INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND**

**SECTION 29.26.** G.S. 58-86-55 reads as rewritten:

**"§ 58-86-55. Monthly pensions upon retirement.**

Any member who has served 20 years as an "eligible fireman" or "eligible rescue squad worker" in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of ~~one hundred sixty-one dollars (\$161.00)~~ one hundred sixty-three dollars (\$163.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2004,~~ July 1, 2005, receive a pension of ~~one hundred sixty-one dollars (\$161.00)~~ one hundred sixty-three dollars (\$163.00) per month.

Members shall pay ten dollars (\$10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No "eligible rescue squad member" shall receive a pension prior to July 1, 1983. No member shall be entitled to a pension hereunder until the member's official duties as a fireman or rescue squad worker for which the member is paid compensation shall have been terminated and the member shall have retired as such according to standards or rules fixed by the board of trustees.

A member who is totally and permanently disabled while in the discharge of the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of ~~one hundred sixty-one dollars (\$161.00)~~ one hundred sixty-three dollars (\$163.00) per month beginning the first month after the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ten dollars (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars (\$10.00) to the fund until the member has made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of the application and annually thereafter.

A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed

because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose volunteer department is taken over by a city or county, and because of such annexation or takeover is unable to perform as a fireman or rescue squad worker of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ten dollars (\$10.00) to the fund until the member has made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

**INCREASE THE MAXIMUM MONTHLY PENSION BENEFITS FOR RETIRED MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD**

**SECTION 29.27.** G.S. 127A-40(a) reads as rewritten:

"(a) Every member and former member of the North Carolina national guard who meets the requirements hereinafter set forth shall receive, commencing at age 60, a pension of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) per month for 20 years' creditable military service with an additional ~~five dollars (\$5.00)~~ seven dollars and fifty cents (\$7.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed ~~one hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) per month. The requirements for such pension are that each member shall:

- (1) Have served and qualified for at least 20 years' creditable military service, including national guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.
- (2) Have at least 15 years of the aforementioned service as a member of the North Carolina national guard.
- (3) Have received an honorable discharge from the North Carolina national guard."

**CONFORM RETIREE RETURN TO TEACHING BENEFIT TO IRS GUIDELINES/CLARIFY DEFINITION OF RETIREMENT**

**SECTION 29.28.(a)** G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount during the 12-month period immediately following the



effective date of retirement or in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).

The computation of postretirement earnings of a beneficiary under this sub-subdivision, G.S. 135-3(8)c., who has been retired at least six months and has not been employed in any ~~capacity, except as a substitute teacher or a part time tutor,~~ capacity with a public school for at least six months immediately preceding the effective date of reemployment, shall not include earnings while the beneficiary is employed to teach on a ~~substitute, interim, or permanent~~ permanent, full-time basis in a public school. The Department of Public Instruction shall certify to the Retirement System that a beneficiary is employed to teach by a local school administrative unit under the provisions of this sub-subdivision and as a retired teacher as the term is defined under the provisions of G.S. 115C-325(a)(5a).

Beneficiaries employed under this sub-subdivision are not entitled to any benefits otherwise provided under this Chapter as a result of this period of employment."

**SECTION 29.28.(b)** G.S. 115C-325(a)(5a) reads as rewritten:

"(5a) "Retired teacher" means a beneficiary of the Teachers' and State Employees' Retirement System of North Carolina who has been retired at least six months, has not been employed in any ~~capacity, other than as a substitute teacher or a part time tutor, with a local board of education or a charter school~~ capacity for at least six months, immediately preceding the effective date of reemployment, is determined by a local board of education or a charter school to have had satisfactory performance during the last year of employment by a local board of education or a charter school, and who is employed to teach as provided in G.S. 135-3(8)c. A retired teacher at a school other than a charter school shall be treated the same as a probationary teacher except that (i) a retired teacher is not eligible for career status

and (ii) the performance of a retired teacher who had attained career status prior to retirement shall be evaluated in accordance with a local board of education's policies and procedures applicable to career teachers."

**SECTION 29.28.(c)** Notwithstanding any other provision of law, each local school administrative unit shall pay to the Teachers' and State Employees' Retirement System a Reemployed Teacher Contribution Rate of eleven and seventy-hundredths percent (11.70%) as a percentage of covered salaries that the retired teachers, who are exempt from the earnings cap, are being paid. Each local school administrative unit shall report monthly to the Retirement Systems Division on payments made pursuant to this subsection.

Notwithstanding any other provision of law, any portion of the payment made by a local school administrative unit to a reemployed teacher who is exempt from the earnings cap, consisting of salary plus the Reemployed Teacher Contribution Rate, that exceeds the State-supported salary level for that position, shall be paid from local funds.

**SECTION 29.28.(d)** Section 57(c) of S.L. 2004-199 reads as rewritten:

**"SECTION 57.(c)** This section expires June 30, ~~2005~~, 2007."

**SECTION 29.28.(e)** G.S. 135-1(20) reads as rewritten:

"(20) "Retirement" ~~shall mean~~ means the termination of employment and the withdrawal- complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance granted under the provisions of this Chapter. Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must render no ~~service~~ service, including part-time, temporary, substitute, or contractor service, at any time during that month. the six months immediately following the effective date of retirement."

**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until June 30, 2007. The remainder of this section becomes effective June 30, 2005.

## **INCREASE BENEFIT/SHERIFFS' SUPPLEMENTAL PENSION FUND**

**SECTION 29.30.(a)** G.S. 143-166.85(a) reads as rewritten:

"(a) An eligible retired sheriff shall be entitled to and receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as sheriff multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired sheriffs on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of ~~G.S., 143-166.83(b).~~ G.S. 143-166.83(b). In no event however shall a monthly pension under this Article exceed an amount, which when added to a retired allowance at retirement from the Local Governmental Employees' Retirement System or

to the amount he would have been eligible to receive if service had not been forfeited by the withdrawal of accumulated contributions, is greater than seventy -five percent (75%) of a sheriff's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of ~~one thousand two hundred dollars (\$1,200)~~ one thousand five hundred dollars (\$1,500)."

**SECTION 29.30.(b)** G.S. 7A-304(a)(3a) reads as rewritten:

"(3a) For the supplemental pension benefits of sheriffs, the sum of ~~seventy five cents (75¢)~~ one dollar twenty-five cents (\$1.25) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes."

**SECTION 29.30.(c)** Subsection (b) of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (b) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of this section becomes effective September 1, 2005.

#### **UTILITIES COMMISSION MEMBERS IN CONSOLIDATED JUDICIAL RETIREMENT SYSTEM/TRANSFER OF CONTRIBUTIONS TO CONSOLIDATED JUDICIAL RETIREMENT SYSTEM/RETIREMENT ALLOWANCE LIMITATION FOR MEMBERS OF THE LEGISLATIVE RETIREMENT SYSTEM**

**SECTION 29.30A.(a)** G.S. 135-50(b) reads as rewritten:

"(b) The purpose of this Article is to improve the administration of justice by attracting and retaining the most highly qualified talent available within the State to the positions of justice and judge, district attorney and solicitor, ~~and~~ and clerk of superior court, within the General Court of ~~Justice~~. Justice, and to membership on the Utilities Commission."

**SECTION 29.30A.(b)** G.S. 135-51 reads as rewritten:

#### **"§ 135-51. Scope.**

(a) This Article provides consolidated retirement benefits for all justices and judges, district attorneys, and solicitors who are serving on January 1, 1974, and who become such thereafter; and for all clerks of superior court who are so serving on January 1, 1975, and who become such ~~thereafter~~ after that date; and for all members of the Utilities Commission who are serving on September 1, 2005, and who become members of the Utilities Commission after that date.

(b) For justices and judges of the appellate and superior court divisions of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Articles 6 and 8, as the case may be, of Chapter 7A of the General Statutes.

For district attorneys and judges of the district court of the General Court of Justice who so served prior to January 1, 1974, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

For clerks of superior court of the General Court of Justice who so served prior to January 1, 1975, the provisions of this Article supplement and, under certain circumstances, replace the provisions of Article 1 of this Chapter.

(c) The retirement benefits of any person who becomes a justice or judge, district attorney, or solicitor on and after January 1, 1974, or clerk of superior court on and after January 1, 1975, or a member of the Utilities Commission on or after September 1, 2005, shall be determined solely in accordance with the provisions of this Article."

**SECTION 29.30A.(c)** G.S. 135-53 reads as rewritten:

**"§ 135-53. Definitions.**

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contributions" with respect to any member shall mean the sum of all the amounts deducted from the compensation of the member pursuant to G.S. 135-68 since he last became a member and credited to his account in the annuity savings fund, plus any amount standing to his credit pursuant to G.S. 135-67(c) as a result of a prior period of membership, plus any amounts credited to his account pursuant to G.S. 135-28.1(b) or 135-56(b), together with regular interest on all such amounts computed as provided in G.S. 135-7(b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the bases of such mortality tables as shall be adopted by the Board of Trustees, and regular interest.
- (2a) "Average final compensation" shall mean the average annual compensation of a member during the 48 consecutive calendar months of membership service producing the highest such average.
- (3) "Beneficiary" shall mean any person in receipt of a retirement allowance or other benefit as provided in this Article.
- (4) "Board of Trustees" shall mean the Board of Trustees established by G.S. 135-6.
- (4a) "Clerk of superior court" shall mean the clerk of superior court provided for in G.S. 7A-100(a).
- (5) "Compensation" shall mean all salaries and wages derived from public funds which are earned by a member of the Retirement System for his service as a justice or judge, or district attorney, or clerk of superior ~~court.~~ court, or as a member of the Utilities Commission.
- (6) "Creditable service" shall mean for any member the total of his prior service plus his membership service.
- (6a) "District attorney" shall mean the district attorney or solicitor provided for in G.S. 7A-60.

- (7) "Filing" when used in reference to an application for retirement shall mean the receipt of an acceptable application on a form provided by the Retirement System.
- (8) "Final compensation" shall mean for any member the annual equivalent of the rate of compensation most recently applicable to him.
- (9) "Judge" shall mean any justice or judge of the General Court of Justice and the administrative officer of the courts.
- (10) "Medical board" shall mean the board of physicians provided for in G.S. 135-6.
- (11) "Member" shall mean any person included in the membership of the Retirement System as provided in this Article.
- (12) "Membership service" shall mean service as a judge, district attorney, ~~or~~ clerk of superior ~~court~~ court, or Utilities Commissioner, rendered while a member of the Retirement System.
- (13) "Previous system" shall mean, with respect to any member, the retirement benefit provisions of Article 6 and Article 8 of Chapter 7A of the General Statutes, to the extent that such Article or Articles were formerly applicable to the member, and in the case of ~~judges~~ a judge of the district court division, ~~and~~ district attorney, and clerk of superior court of the General Court of Justice, and in the case of a Utilities Commissioner, the Teachers' and State Employees' Retirement System.
- (14) "Prior service" shall mean service rendered by a member, prior to his membership in the Retirement System, for which credit is allowable under G.S. 135-56.
- (14a) "Utilities Commissioner" means a member of the North Carolina Utilities Commission as provided for in G.S. 62-10.
- (15) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the Board of Trustees in accordance with G.S. 135-7(b).
- (16) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this Chapter. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.
- (17) "Retirement allowance" shall mean the periodic payments to which a beneficiary becomes entitled under the provisions of this Article.
- (18) "Retirement System" shall mean the "Consolidated Judicial Retirement System" of North Carolina, as established in this Article.
- (19) "Year" as used in this Article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year, unless otherwise defined by regulation of the Board of Trustees."

**SECTION 29.30A.(d)** G.S. 135-54 reads as rewritten:

**"§ 135-54. Name and date of establishment.**

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for justices and judges, district attorneys, and clerks of superior court of the General Court of Justice of North Carolina, and Utilities Commissioners and their survivors. The Retirement System so created shall be established as of January 1, 1974.

The Retirement System shall have the power and privileges of a corporation and shall be known as the "Consolidated Judicial Retirement System of North Carolina," and by such name all of its business shall be transacted."

**SECTION 29.30A.(e)** G.S. 135-55 reads as rewritten:

**"§ 135-55. Membership.**

- (a) The membership of the Retirement System shall consist of:
  - (1) All judges and district attorneys in office on January 1, 1974;
  - (2) All persons who become judges and district attorneys or reenter service as judges and district attorneys after January 1, 1974;
  - (3) All clerks of superior court in office on January 1, 1975; ~~and~~
  - (4) All persons who become clerks of superior court or reenter service as clerks of superior court after January 1, ~~1975-1975~~;
  - (5) All Utilities Commissioners in office on September 1, 2005; and
  - (6) All persons who become Utilities Commissioners or reenter service as Utilities Commissioners after September 1, 2005.
- (b) The membership of any person in the Retirement System shall cease upon:
  - (1) The withdrawal of his accumulated contributions after he is no longer a judge, district ~~attorney~~ attorney, Utilities Commissioner, or clerk of superior court, or
  - (2) His retirement under the provisions of the Retirement System, or
  - (3) His death."

**SECTION 29.30A.(f)** G.S. 135-58(a4) reads as rewritten:

"(a4) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after January 1, 2004, but before September 1, 2005, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

- (1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service

- rendered as a justice of the Supreme Court or judge of the Court of Appeals;
- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court or as Administrative Officer of the Courts;
  - (3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;
  - (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
  - (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56."

**SECTION 29.30A.(g)** G.S. 135-58 is amended by adding a new subsection to read:

"(a5) Any member who retires under the provisions of G.S. 135-57(a) or G.S. 135-57(c) on or after September 1, 2005, after the member has either attained the member's 65th birthday or has completed 24 years or more of creditable service, shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of the member's retirement and shall be continued on the first day of each month thereafter during the member's lifetime, the amount of which shall be computed as the sum of the amounts in subdivisions (1), (2), (3), (4), and (5) of this subsection, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which the member is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System, or the Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment), would total three-fourths of the member's final compensation:

- (1) Four and two hundredths percent (4.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

- (2) Three and fifty-two hundredths percent (3.52%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the superior court, as Administrative Officer of the Courts, or as a Utilities Commissioner;
- (3) Three and two hundredths percent (3.02%) of the member's final compensation, multiplied by the number of years of creditable service rendered as a judge of the district court, district attorney, or clerk of superior court;
- (4) A service retirement allowance computed in accordance with the service retirement provisions of Article 3 of Chapter 128 of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service equal to the number of years of the member's creditable service that was transferred from the Local Governmental Employees' Retirement System to this System as provided in G.S. 135-56; and
- (5) A service retirement allowance computed in accordance with the service retirement provisions of Article 1 of this Chapter of the General Statutes using an average final compensation as defined in G.S. 135-53(2a) and creditable service, including any sick leave standing to the credit of the member, equal to the number of years of the member's creditable service that was transferred from the Teachers' and State Employees' Retirement System or the Legislative Retirement System to this System as provided in G.S. 135-56."

**SECTION 29.30A.(h)** G.S. 135-70.1 is amended by creating a new subsection to read:

"(a1) The accumulated contributions, creditable service, and reserves, if any, of a Utilities Commissioner, as defined in G.S. 135-53(14a), who is serving as a Utilities Commissioner on September 1, 2005, shall be transferred from the Teachers' and State Employees' Retirement System to the Consolidated Judicial Retirement System for the service rendered as a Utilities Commissioner. The accumulated contributions credited in the annuity savings fund in the Teachers' and State Employees' Retirement System for service as a Utilities Commissioner shall be credited to the annuity savings fund in the Consolidated Judicial Retirement System, and the member shall be credited with all membership service as a Utility Commissioner in the Consolidated Judicial Retirement System."

**SECTION 29.30A.(i)** G.S. 135-71 is amended by adding a new subsection to read:

"(d) Notwithstanding the provisions of G.S. 135-70.1 to the contrary, a retired former member and/or beneficiary of the Teachers' and State Employees' Retirement System as defined in G.S. 135-1(6), whose retirement allowance from this System and/or from the Teachers' and State Employees' Retirement System ceases upon a return to membership service under this System, shall be permitted to transfer the accumulated contributions, creditable service, and reserves, if any, from the Teachers' and State Employees' Retirement System to this System on the same basis as provided for



members of other retirement systems under G.S. 135-70.1, if the member attains five or more years of total membership service in this System, and completes at least three years of membership service subsequent to the member's return to membership service."

**SECTION 29.30A.(j)** G.S. 120-4.21(c) reads as rewritten:

"(c) Limitations. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of ~~his~~ the member's "highest annual salary". salary nor shall a member receive any service retirement allowance whatsoever while employed in a position that makes the member a contributing member of either the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member should become a member of either of these systems, payment of the member's service retirement allowance shall be suspended until the member withdraws from membership in that system."

**SECTION 29.30A.(k)** Subsection (j) of this section becomes effective September 1, 2005, but applies only to members retiring on and after that date. The remainder of this section becomes effective September 1, 2005.

#### **CHANGE DISABILITY PLAN AMENDMENT EFFECTIVE DATE**

**SECTION 29.30B.(a)** The introductory language to Section 4 of S.L. 2004-78 reads as rewritten:

"**SECTION 4.** Effective August 1, ~~2005~~, 2006, G.S. 135-106(a), as rewritten by Section 3 of this act, reads as rewritten:"

**SECTION 29.30B.(b)** Section 6 of S.L. 2004-78 reads as rewritten:

"**SECTION 6.** Sections 1 through 3 are effective retroactively from and after July 1, 2003. Section 4 of this act becomes effective August 1, ~~2005~~, 2006, and applies only to persons who are not vested in the disability plan in question on that date. The remainder of this act is effective when it becomes law."

#### **DEATH BENEFITS ACT DEFINITION**

**SECTION 29.30C.** G.S. 143-166.2(c) reads as rewritten:

"(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties. When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 11 of Chapter 143B of the General Statutes. For purposes of this Article, when a ~~fireman~~ law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the ~~fireman~~ law enforcement officer, fireman, rescue squad

worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty."

## STATE HEALTH PLAN CHANGES

**SECTION 29.31.(a)** G.S. 135-40.5 reads as rewritten:

**"§ 135-40.5. Benefits not subject to deductible or coinsurance.**

- (a) Repealed by Session Laws 1985, c. 192, s. 5.
- (b) Repealed by Session Laws 1991, c. 427, s. 20.
- (c) Preadmission Testing. – The Plan will pay one hundred percent (100%) of reasonable and customary charges for diagnostic, laboratory and x-ray examinations performed on an outpatient basis.
- (d) Repealed by Session Laws 2001-253, s. 1(d), effective July 1, 2001.
- (e) Routine Diagnostic Examinations. – The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including breast, colon, rectal, and prostate exams, X rays, ~~mammograms~~, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Routine diagnostic examinations and tests covered under this subsection also include examinations and tests for the screening for the early detection of cervical cancer. The coverage shall be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control for any covered female. For the purposes of this subsection, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars (\$150.00) per fiscal year.
- (f) Immunizations. – The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician.

(g) Prescription Drugs. – The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are to be determined by the Plan's Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the following amounts: pharmacy charges up to ten dollars (\$10.00) for each generic prescription, twenty five dollars (\$25.00) for each branded prescription, and ~~thirty five dollars (\$35.00)~~ forty dollars (\$40.00) for each branded prescription with a generic equivalent drug, and ~~forty dollars (\$40.00)~~ fifty dollars (\$50.00) for each branded or generic prescription not on a formulary used by the Plan. Allowable charges shall not be greater than a pharmacy's usual and customary charge to the general public for a particular prescription. Prescriptions shall be for no more than a 34-day supply for the purposes of the copayments paid by each covered individual. By accepting the copayments and any remaining allowable charges provided by this subsection, pharmacies shall not balance bill an individual covered by the Plan. A prescription legend drug is defined as an article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription." Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though a prescription is not required. The Plan may use a pharmacy benefit manager to help manage the Plan's outpatient prescription drug coverage. In managing the Plan's outpatient prescription drug benefits, the Plan and its pharmacy benefit manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, and hair growth drugs unless such coverage is medically necessary to the health of the member. The Plan and its pharmacy benefit manager shall not provide coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinum toxin without approval in advance by the pharmacy benefit manager. Any formulary used by the Plan's Executive Administrator and pharmacy benefit manager shall be an open formulary. Plan members shall not be assessed more than two thousand five hundred dollars (\$2,500) per person per fiscal year in copayments required by this subsection."

**SECTION 29.31.(b)** The first paragraph of G.S. 135-40.6 reads as rewritten: "**§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).**

The benefits provided in this section are subject to a deductible of three hundred fifty dollars (\$350.00) per covered individual to an aggregate maximum of one thousand fifty dollars (\$1,050) per employee and child(ren) or employee and family coverage contract per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a maximum of ~~one thousand five hundred dollars (\$1,500)~~ two thousand dollars (\$2,000) out-of-pocket per fiscal year. The aggregate maximum out-of-pocket required of individuals covered by this section shall not be more than ~~four thousand five hundred dollars (\$4,500)~~ six thousand dollars (\$6,000) per employee and child(ren) or employee and family coverage contract per fiscal year.

...."

**SECTION 29.31.(c)** G.S. 135-40.6(8)s. reads as rewritten:

**"§ 135-40.6. Benefits subject to deductible and coinsurance (comprehensive benefits).**

...

(8) Other Covered Charges. –

...

s. Routine Diagnostic Examinations: Allowable charges for routine diagnostic examinations and tests, including examinations and tests for the screening for the early detection of cervical cancer, breast, colon, rectal, and prostate exams, X rays, ~~mammograms~~, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for covered individuals age 50 years and older and, for examinations and tests for the screening for the early detection of cervical cancer, in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. The Plan will pay one hundred percent (100%) of allowable charges for mammograms once per year for covered individuals age 40 years and over, and not more often than once every three years for covered individuals to age 40 years, when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities or to comply with governmental licensing requirements. For the purposes of this sub-subdivision, "examinations and laboratory tests for the screening for the early detection of cervical cancer" means conventional PAP smear screening, liquid-based cytology, and human papilloma virus (HPV) detection methods for women with equivocal findings on cervical cytologic analysis that are subject to the approval of and have been approved by the United States Food and Drug Administration."

**SECTION 29.31.(d)** G.S. 135-40.8 reads as rewritten:

**"§ 135-40.8. Out-of-pocket expenditures.**

(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays eighty percent (80%) of the eligible expenses outlined in G.S. 135-40.6. The remaining twenty percent (20%) is paid by the covered individual until ~~one thousand five hundred dollars (\$1,500)~~ two thousand dollars (\$2,000) per covered individual up to an aggregate of ~~four thousand five hundred dollars (\$4,500)~~ six thousand dollars (\$6,000) per employee and child(ren) or employee and family coverage contract per fiscal year in excess of the deductible has been paid out of pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(b) Repealed by Session Laws 2001-253, s. 1(m), effective July 1, 2001.

(c) Notwithstanding any other provision of this Article, on the first day of each confinement the Plan does not pay the first ~~one hundred dollars (\$100.00)~~ fifty dollars (\$150.00) of the room accommodation charge allowable under G.S. 135-40.6(1). Any readmission within 60 days after discharge for the same reason shall be considered the same confinement for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c1) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) of the facility fees and ancillary charges for allowable charges exceeding five hundred dollars (\$500.00) per episode of care for hospital outpatient departments and ambulatory surgical facilities under G.S. 135-40.6(4). Readmission within 30 days after discharge for the same reason shall be considered the same episode of care for the purpose of this subsection. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c2) Notwithstanding any other provision of this Article, the Plan does not pay the first ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) of allowable emergency room charges when admission to a hospital pursuant to the emergency room use does not immediately follow. This subsection shall apply only when less costly alternative means of emergency medical care are reasonably available as determined by the Executive Administrator and Board of Trustees. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(c3) Notwithstanding any other provision of this Article, the Plan does not pay for the first fifteen dollars (\$15.00) of allowable charges for each home, office, or skilled nursing facility visit under the provisions of G.S. 135-40.6(7)a. and b., G.S. 135-40.6(4), G.S. 135-40.6(8)i., j., k., n., r., and s., and G.S. 135-40.5(e). The co-payment assessed by this subsection shall be assessed only once per person per provider per day and shall not apply to laboratory, pathology, and radiology services, or to charges for injected medications. The exclusion made under this subsection shall not count toward the deductible nor toward the maximum amount of coinsurance out-of-pocket costs.

(d) Where a network of qualified preferred providers of inpatient and outpatient hospital care is reasonably available for use by those individuals covered by the Plan,

use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars (\$5,000) per fiscal year per covered individual up to an aggregate of fifteen thousand dollars (\$15,000) per employee and child(ren) or employee and family coverage contract per fiscal year in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6. The Plan then pays one hundred percent (100%) of the remaining covered expenses.

(e) Where qualified out-of-state preferred providers of medical care are not reasonably available in medical emergencies, the Plan pays the amounts covered by subsection (a) of this section. Any amount of charges for services under this section that exceeds the amount allowed by the Plan for the services of qualified preferred providers under this section shall be negotiated between the Plan and the provider of medical services, and the Plan shall ensure that the Plan member is not held financially responsible for the amount of these excess charges. If a Plan member is not capable of making a decision about choosing an in-State qualified preferred provider and emergency services personnel transport the Plan member to a provider outside of the Plan network, then the coverage under this subsection shall apply. As used in this section, a "medical emergency" is the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of immediate medical care, could imminently result in injury or danger to self or others."

**SECTION 29.31.(e)** Section 31.21.(d) of S.L. 2004-124 reads as rewritten:

"**SECTION 31.21.(d)** This section becomes effective July 1, ~~2004-2004~~, but expires June 30, 2006."

## **FOREST CITY EMPLOYEES IN STATE HEALTH PLAN**

**SECTION 29.32.** Section 31.26(j) of S.L. 2004-124 reads as rewritten:

"**SECTION 31.26.(j)** This section applies ~~to~~to:

- (1) Bladen, Cherokee, Rutherford, Washington, and Wilkes Counties ~~only-only, and~~
- (2) The Town of Forest City only."

## **STATE HEALTH PLAN/OPTIONAL PROGRAMS**

**SECTION 29.33.(a)** G.S. 135-39.5B reads as rewritten:

"**§ 135-39.5B. Prepaid-Optional plans.**

(a) The Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, provide for optional prepaid hospital and medical benefits plans. Benefits offered under such optional plans shall be comparable to those offered under the Plan. The amounts of State funds contributed for such optional plans shall not be more than the amounts contributed for each person eligible under G.S. 135-40.2 on a noncontributory Employee Only basis, with the person selecting an optional plan paying any excess, if necessary. The amount of State funds contributed to such optional plans shall also not exceed the amount of an optional plan's cost for Employee Only coverage. The Executive Administrator and Board of Trustees are authorized to assess and collect fees from participating optional

plans provided by this section for administrative purposes and for risk management purposes. Such fees may be based upon the enrollees' risk factors and the number and types of contracts enrolled by each participating optional plan, and may be collected by the Plan in a manner prescribed by the Executive Administrator and Board of Trustees. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefit plan authorized under this section on and after the effective date of enrollment in the optional prepaid plan, except in cases of continuous hospital confinement approved by the Executive Administrator.

(b) The Executive Administrator and Board of Trustees may, after consulting with the Committee on Employee Hospital and Medical Benefits, adopt an arrangement for an optional hospital and medical benefits program other than the one specified in subsection (a) of this section. The optional program may include one that is purchased or underwritten by the State and may be a PPO or other type optional program. Optional programs under this section are not subject to benefits and cost-sharing requirements under G.S. 135-40.5 through G.S. 135-40.9. The Executive Administrator and Board of Trustees may set premium rates for coverage under an optional program on a partially contributory basis, provided that the amounts of State funds contributed for coverage on a partially contributory basis shall not be more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the optional program coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed for purchased optional programs shall not exceed the amount of a purchased optional program's cost for Employee Only coverage. Contracts for an optional program under this subsection are not subject to Article 3 of Chapter 143 of the General Statutes."

**SECTION 29.33.(b)** G.S. 135-40.4(a) reads as rewritten:

**"§ 135-40.4. Benefits in general.**

(a) In the event a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9.

The Plan is divided into two parts. The first part includes certain benefits which are not subject to a deductible or coinsurance. The second part is a comprehensive plan and includes those benefits which are subject to both a three hundred fifty dollar (\$350.00) deductible for each covered individual to an aggregate maximum of one thousand fifty dollars (\$1,050) per employee and child(ren) or employee and family coverage contract and coinsurance of 80%/20%. There is a limit on out-of-pocket expenses under the second part.

Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan may contract with providers of institutional and professional medical care and services to established preferred provider networks. The terms pertaining to reimbursement rates or other terms of consideration of any contract between hospitals, hospital authorities, doctors or other medical providers, an optional program contract authorized under G.S. 135-39.5B(b), or a pharmacy benefit manager and the Plan shall not be a public record under Chapter 132 of the General Statutes for a period of thirty

months after the date of the expiration of the contract. Provided, however, nothing in this subsection shall be deemed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities. The design, adoption, and implementation of the preferred provider contracts and networks are not subject to the requirements of Chapter 143 of the General Statutes, provided that for any hospital preferred provider network all hospitals will have an opportunity to contract with the Plan if they meet the contract requirements. The Executive Administrator and Board of Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred provider contracts on a timely basis and shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits on its progress in negotiating the preferred provider contracts. The Executive Administrator and Board of Trustees shall implement a refined diagnostic-related grouping or diagnostic-related grouping-based reimbursement system for hospitals as soon as practicable, but no later than January 1, 1995."

**SECTION 29.33.(c)** G.S. 135-39.4A(f) reads as rewritten:

"(f) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims ~~Processor or Processor~~, with an optional ~~prepaid~~-hospital and medical benefit plan or program authorized under G.S. 135-39.5B, ~~or~~ with a preferred provider of institutional or professional hospital and medical ~~care care~~, or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits."

**SECTION 29.33.(d)** The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan may, after consultation with the Joint Legislative Commission on Governmental Operations, negotiate an extension of the current claims processing contract. The extension shall not exceed three years beyond June 30, 2007, the expiration date of the current claims processing contract. In negotiating the extension, the Executive Administrator may include as part of the extension amendments to the terms of the current claims processing contract, as well as inclusion of optional plans or programs authorized under G.S. 135-39.5B, as amended by this section. Amendments to the terms of the current claims processing contract may also include changes in reimbursement levels, services, and other terms as deemed appropriate by the Executive Administrator. As used in this subsection, "current claims processing contract" means the claims processing contract in effect on July 1, 2005, and expiring June 30, 2007. Consultation with the Joint Legislative Commission on



Governmental Operations pursuant to this subsection meets the requirements of Article 3 of Chapter 135 of the General Statutes pertaining to consultation with the Committee on Employee Hospital and Medical Benefits.

## **STATE HEALTH PLAN/EXEMPT POSITIONS**

**SECTION 29.34.(a)** G.S. 135-39.4A(f) reads as rewritten:

"(f) The Executive Administrator shall appoint the Deputy Executive Administrator and may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may designate managerial, professional, or policy-making positions as exempt from the State Personnel Act. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor or with an optional prepaid hospital and medical benefit plan or with a preferred provider of institutional or professional hospital and medical care or with a pharmacy benefit manager shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits."

**SECTION 29.34.(b)** G.S. 126-5(c1) is amended by adding the following new subdivision to read:

"(24) Employees of the Teachers' and State Employees' Comprehensive Major Medical Plan as designated by law or by the Executive Administrator of the Plan."

**SECTION 29.34.(c)** Notwithstanding G.S. 143-34.1, the Executive Administrator may establish and fill up to three additional managerial, professional, or policy-making positions as necessary to implement the Plan and may designate these positions as exempt from the State Personnel Act.

## **PART XXX. CAPITAL APPROPRIATIONS.**

### **GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION**

**SECTION 30.1.** The appropriations made by the 2005 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and acquiring buildings and land for State government purposes.

### **CAPITAL APPROPRIATIONS/GENERAL FUND**

**SECTION 30.2.** There is appropriated from the General Fund for the 2005-2006 fiscal year the following amount for capital improvements:

**Capital Improvements – General Fund**

**2005-2006**

Department of Commerce – State Ports Authority

Ports of Wilmington and Morehead City	\$ 9,000,000
Department of Cultural Resources	
Capitol Area Visitor's Center	250,000
NC Museum of Art	10,000,000
Department of Environment and Natural Resources	
Division of Forest Resources – District 9	300,000
Water Resources Development Projects	15,260,000
University of North Carolina System - Board of Governors	
North Carolina Agricultural and Technical State University – Visual and Performance Arts Building	25,000
North Carolina State University – Engineering Complex III	8,700,000
University of North Carolina at Chapel Hill – Renaissance Computing Institute	500,000
University of North Carolina at Chapel Hill – School of Dentistry	2,000,000
University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University – Joint Millennium Campus	2,000,000
University of North Carolina at Wilmington – School of Nursing	2,600,000
Winston-Salem State University – Laboratory Facility Planning Funds	750,000
<b>TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND</b>	<b>\$ 51,385,000</b>

**WATER RESOURCES DEVELOPMENT PROJECT FUNDS**

**SECTION 30.3.(a)** The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose costs are as indicated:

<b>Name of Project</b>	<b>2005-2006</b>
(1) Wilmington Harbor Deepening	\$1,300,000
(2) Manteo (Shallowbag) Bay Channel Maintenance	50,000
(3) Wilmington Harbor Maintenance Dredging	500,000

(4)	B. Everett Jordan Water Supply Storage	100,000
(5)	John H. Kerr Reservoir Operations Evaluation	600,000
(6)	Bogue Banks Shore Protection Study (Carteret County)	75,000
(7)	Surf City/North Topsail Beach Protection Study	250,000
(8)	West Onslow Beach (Topsail)	100,000
(9)	Wrightsville Beach Nourishment	580,000
(10)	Hurricane Stream Restoration – Western North Carolina	2,000,000
(11)	Swan Quarter (Hyde County) Flood Control Dikes	100,000
(12)	Ocracoke NCCAT Estuarine Shoreline Protection	1,500,000
(13)	Far Creek Maintenance Dredging	120,000
(14)	Belhaven Harbor Environmental Improvements	250,000
(15)	Lower Lockwoods Folly River	286,000
(16)	Walters Slough Maintenance Dredging	122,000
(17)	Hurricane Isabel Emergency Stream Cleanup – Northeastern North Carolina	1,370,000
(18)	State-Local Projects	2,000,000
(19)	Princeville Flood Control	250,000
(20)	Currituck Sound Water Management Study	300,000
(21)	Aquatic Weed Control, Lake Gaston and Statewide	375,000
(22)	Tar River and Pamlico Sound Feasibility Study	100,000
(23)	State Sponsored Dredging Contingency	2,500,000
(24)	North Carolina Oyster Habitat Restoration	50,000
(25)	Emergency Flood Control Projects	187,000
(26)	Projected Feasibility Studies	100,000
(27)	Planning Assistance to Communities	95,000

**TOTALS** **\$15,260,000**

**SECTION 30.3.(b)** Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 2005-2006 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) U.S. Army Corps of Engineers project feasibility studies.
- (2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2005-2006.
- (3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 2006-2007 fiscal year.

**SECTION 30.3.(c)** The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations,

the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.
- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The semiannual reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

**NURSING EDUCATION AND RESEARCH CENTER AT FAYETTEVILLE STATE UNIVERSITY**

**SECTION 30.3A.** Section 1.1 of S.L. 2004-179 reads as rewritten:

"**SECTION 1.1.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

<b>Aggregate Maximum</b>	<b>Maximum before 7/1/05</b>	<b>Project</b>
\$180,000,000	\$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim

35,000,000	25,000,000	temporary facilities to house the program during construction of the facility.
		Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting <del>services for a Center of Excellence of Teaching and Nursing services,</del> and <u>construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.</u>
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for facilities for development of the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, and engineering, architectural, and other consulting services for an Optometry School facility at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, and engineering, architectural, and other consulting services for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
10,000,000	10,000,000	Property acquisition in Piedmont-Triad Research Park for Winston-Salem State University programming related to biotechnology education and research; and land acquisition, site preparation, and engineering, architectural, and other consulting services for a Center for Design Innovation to be operated jointly by

**TOTAL:**

\$388,000,000 \$265,000,000"

**PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS**

**SECTION 30.4.** The appropriations made by the 2005 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2005 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2005 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

**ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUNDS**

**SECTION 30.5.** When each capital improvement project appropriated by the 2005 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under a construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts

where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

## **REPAIR AND RENOVATION RESERVE ALLOCATION**

**SECTION 30.6.(a)** Of the funds in the Reserve for Repairs and Renovations for the 2005-2006 fiscal year, forty-six percent (46%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

**SECTION 30.6.(b)** Of the funds allocated to the Office of State Budget and Management in subsection (a) of this section, at least one million five hundred thousand dollars (\$1,500,000) for the 2005-2006 fiscal year shall be used for the repair and renovation of the Charlotte Hawkins Brown State Historic Site.

**SECTION 30.6.(c)** Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, up to seven hundred thousand dollars (\$700,000) for the 2005-2006 fiscal year shall be used for the repair and reconstruction of the chancellor's residence at Fayetteville State University, notwithstanding G.S. 143-15.3A.

## **PROJECT COST INCREASE**

**SECTION 30.7.** Upon the request of the administration of a State agency, department, or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

## **NEW PROJECT AUTHORIZATION**

**SECTION 30.8.** Upon the request of the administration of any State agency, department, or institution, the Director of the Budget may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Prior to authorizing the construction of a capital improvement project pursuant to this section, the Director shall consult with the Joint Legislative Commission on Governmental Operations.

## **ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS**

**SECTION 30.9.** Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget.

## **APPROPRIATIONS LIMITS/REVERSION OR LAPSE**

**SECTION 30.10.** Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 2005 General Assembly may be expended only for specific projects set out by the 2005 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 2005 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

## **PART XXXI. LOTTERY.**

### **LOTTERY**

**SECTION 31.1.(a)** If House Bill 1023, 2005 Regular Session, becomes law, then the title of House Bill 1023, 2005 Regular Session, is amended to read: "AN ACT TO ESTABLISH A STATE LOTTERY TO GENERATE FUNDS TO FURTHER THE GOAL OF PROVIDING ENHANCED EDUCATIONAL OPPORTUNITIES SO THAT ALL STUDENTS IN THE PUBLIC SCHOOLS CAN ACHIEVE THEIR FULL POTENTIAL, TO SUPPORT SCHOOL CONSTRUCTION, TO FUND COLLEGE



AND UNIVERSITY SCHOLARSHIPS, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES."

**SECTION 31.1.(b)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-102, as enacted by that act, reads as rewritten:

**"§ 18C-102. Purpose and intent.**

The General Assembly declares that the purpose of this Chapter is to establish a State-operated lottery to generate funds for the public purposes described in this Chapter. ~~The net revenues generated by the lottery shall not supplant revenues already expended or projected to be expended for those public purposes, and lottery net revenues shall supplement rather than be used as substitute funds for the total amount of money allocated for those public purposes.~~"

**SECTION 31.1.(c)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-103(4) and (11), as enacted by that act, read as rewritten:

**"§ 18C-103. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

- (4) 'Game' or 'lottery game' means any procedure or amusement authorized by the Commission where prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares that provide the opportunity to win those ~~prizes.~~ prizes and does not utilize a video gaming machine as defined in G.S. 14-306.1(c).

...

- (11) 'Vendor' or 'lottery vendor' means any person other than a lottery retailer who submits a bid, proposal, or offer to procure a contract for goods or services for the Commission."

**SECTION 31.1.(d)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-111, as enacted by that act, reads as rewritten:

**"§ 18C-111. Commission membership; appointment; selection of chair; vacancies; removal; meetings; compensation.**

(a) The Commission shall consist of nine members, ~~three of whom shall be appointed by the Governor, three of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the initial chair of the Commission from among its membership, who shall serve as chair for one year from the date of appointment. Thereafter, the Commission shall select a chair from among its membership to serve at the pleasure of the Commission.~~ five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor.

(b) ~~Of the initial appointees of the Governor, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years.~~ three members shall serve a term of one year, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall serve a term of two years, and one member shall serve a term of three years. Of the initial appointees of the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall serve a term of two years, and one member shall serve a term of three years. All succeeding appointments shall be for terms of five years. Members shall not serve for more than two successive terms.

(c) Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur.

(d) The Commission shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

(e) Members of the Commission shall receive per diem, subsistence, and travel as provided in G.S. 138-5 and G.S. 138-6."

**SECTION 31.1.(e)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-112, as enacted by that act, reads as rewritten:

**"§ 18C-112. Qualifications of Commissioners.**

(a) Of the members of the Commission appointed by the Governor, at least one member shall have a minimum of five years' experience in law ~~enforcement, and no more than two members shall be from the same political party as the Governor.~~ enforcement.

(b) Of the members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one member shall be a certified public ~~accountant, and no more than two members shall be from the same political party as the President Pro Tempore of the Senate.~~ accountant.

(c) Of the members of the Commission appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one member shall have retail sales ~~experience, and no more than two members shall be from the same political party as the Speaker of the House of Representatives.~~ experience as an owner or manager.

(d) In making appointments to the Commission, the appointing authorities shall consider the composition of the State with regard to geographic representation and gender, ethnic, racial, and age composition."

**SECTION 31.1.(f)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-114 reads as rewritten:

**"§ 18C-114. Powers and duties of the Commission.**

- (a) The Commission shall have the following powers and duties:
- (1) To specify the types of lottery games and gaming technology to be used in the Lottery.
  - (2) ~~To prescribe the nature of lottery advertising.~~ To prescribe the nature of lottery advertising which shall comply with the following:
    - a. All advertising shall include resources for responsible gaming information.
    - b. No advertising may intentionally target specific groups or economic classes.
    - c. No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties.
    - d. No advertising may have the primary purpose of inducing persons to participate in the Lottery.
  - (3) To specify the number and value of prizes for winning tickets or shares in lottery games, including cash prizes, merchandise prizes, prizes consisting of deferred payments or annuities, and prizes of tickets or shares in the same lottery game or other lottery games.
  - (4) To specify the rules of lottery games and the method for determining winners of lottery games.
  - (5) To specify the retail sales price for tickets or shares for lottery games.
  - (6) To establish a system to claim prizes, including determining the time periods within which prizes must be claimed, to verify the validity of tickets or shares claimed to win prizes, and to effect payment of those prizes.
  - (7) To conduct a background investigation, including a criminal history record check, of applicants for the position of Director, which may include a search of the State and National Repositories of Criminal Histories based on the fingerprints of applicants.
  - (8) ~~To determine the salary of the Director and the terms and conditions for employment contracts for the Director.~~ To charge a fee of lottery vendors not to exceed the cost of the criminal record check of the lottery vendor.
  - (9) To specify the manner of distribution, dissemination, or sale of lottery tickets or shares to lottery game retailers or directly to the public.
  - (10) To determine the incentives, if any, for any lottery employees, lottery vendors, lottery contractors, or electronic computer terminal operators.
  - (11) ~~To approve and authorize the Director to enter into contracts with lottery game retailers upon terms and conditions as specified by the Commission.~~ To specify the authority, compensation, and role of the Director, and to specify the authority, selection, and role of the other employees of the Commission. All of the following apply to all employees of the Commission:

- a. No employee of the Commission may have a financial interest in any lottery vendor or lottery contractor, other than an interest as part of a mutual fund.
- b. No employee of the Commission with decision-making authority shall participate in any decision involving the retailer or vendor with whom the employee has a financial interest.
- c. No employee of the Commission who leaves the employment of the Commission may represent any vendor or retailer before the Commission for a period of one year following termination of employment with the Commission.
- d. A background investigation shall be conducted on each applicant for employment with the Commission.
- e. The Commission shall bond all employees with access to lottery funds or revenue or security.

(12) To approve and authorize the Director to enter into agreements with other states to operate and promote multistate lotteries consistent with the purposes set forth in this Chapter.

(13) Any other powers necessary for the Commission to carry out its responsibilities under this Chapter.

(b) ~~The Commission may adopt rules to carry out its duties and responsibilities under this Chapter.~~ Article 3D of Chapter 147 of the General Statutes shall not apply to the Commission."

**SECTION 31.1.(g)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-120(b)(3) and G.S. 18C-120(b)(6), as enacted by that act, read as rewritten:

"(b) The Director shall have the following powers and duties, under the supervision of the Commission:

...  
 (3) To set the salaries of all Commission employees, subject to the approval of the Commission, ~~and to employ all personnel of the Commission.~~ Except for the provisions of Articles 6 and 7 of Chapter 126 of the General Statutes, all employees of the Commission shall be exempt from the State Personnel Act.

...  
 (6) ~~To receive reports of alleged violations of the law relating to the operation of the Lottery and report those violations to the appropriate law enforcement authority.~~ coordinate and collaborate with the appropriate law enforcement authorities regarding investigations of violations of the laws relating to the operation of the Lottery and make reports to the Commission regarding those investigations.

...."

**SECTION 31.1.(h)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-121, as enacted by that act, reads as rewritten:

**"§ 18C-121. Accountability; books and records.**

The Director shall ~~make and keep~~ have made and kept books and records that accurately and completely reflect each day's transactions, including the distribution of tickets or shares to lottery game retailers, receipt of funds, prize claims, prizes paid directly by the Commission, expenses, and all other financial transactions involving lottery funds necessary to permit preparation of financial statements that conform with generally accepted accounting principles."

**SECTION 31.1.(i)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-122, as enacted by that act, reads as rewritten:

**"§ 18C-122. Independent audits.**

(a) At the beginning of each calendar year, the ~~Director~~-Commission shall engage an independent firm experienced in security procedures, including computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Commission and of the Lottery. At a minimum, such a security assessment should include a review of network vulnerability, application vulnerability, application code review, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness.

(b) The portion of the security audit report containing the overall evaluation of the Commission and of lottery games in terms of each aspect of security shall be presented to the Commission, to the Governor, and to the General Assembly.

(c) The portion of the security audit report containing specific recommendations shall be confidential, shall be presented only to the Director and to the Commission, and shall be exempt from Chapter 132 of the General Statutes. The Commission may hear the report of such an audit, discuss, and take action on any recommendations to address that audit under G.S. 143-318.11(a)(1).

(d) Biennially at the end of the fiscal year, the ~~Director~~-Commission shall engage an independent auditing firm that has experience in evaluating the operation of lotteries to perform an audit of the Lottery. The results of this audit shall be presented to the Commission, to the Governor, and to the General Assembly."

**SECTION 31.1.(j)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-130(b), as enacted by that act, reads as rewritten:

"(b) In lottery games using tickets, each ticket in a particular game shall have printed on it a unique number distinguishing it from every other ticket in that lottery game and an abbreviated form of the game-play ~~rules~~-rules, including resources for responsible gaming information. In lottery games using tickets, each ticket may have printed on it a depiction of one or more cartoon characters, whose primary appeal is not to minors. In lottery games using tickets with preprinted winners, the overall estimated odds of winning prizes shall be printed on each ticket. No name or photograph of a current or former elected official shall appear on the tickets of any lottery game."

**SECTION 31.1.(j1)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-130(e), as enacted by that act, reads as rewritten:

"(e) ~~The only advertising of the Lottery that shall be permitted is point of sale advertising and advertising on the premises of lottery retailers~~. Lottery advertising shall be tastefully designed and presented in a manner to minimize the appeal of lottery

games to minors. The use of cartoon characters or of false, misleading, or deceptive information in lottery advertising is prohibited. All advertising promoting the sale of lottery tickets or shares for a particular game shall include the actual or estimated overall odds of winning the game."

**SECTION 31.1.(k)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-132, as enacted by that act, reads as rewritten:

**"§ 18C-132. Procedures for drawings and claiming prizes; payment of prizes; protection of information concerning certain prize winners.**

(a) If a lottery game uses a daily or less frequent drawing of winning numbers, a drawing among entries, or a drawing among finalists, all of the following conditions shall be met:

- (1) The drawings shall be open to the public.
- (2) The drawings shall be witnessed by an independent certified public accountant.
- (3) Any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the Commission both before and after the drawings.
- (4) Audio and visual records of the drawings and inspections shall be made.

(b) ~~If a valid claim is not made for a prize within the applicable period, the unclaimed prize money may be used to increase prize payments for future games or may be used for other purposes consistent with this Chapter.~~ Prizes that remain unclaimed after the period set by the Commission for claiming the prizes shall not be considered abandoned property. If a valid claim is not made for a prize within the applicable period, the unclaimed prize money shall be handled in accordance with Article 35A of Chapter 115C of the General Statutes.

(c) After the expiration of the claim period for prizes for each lottery game, the Commission shall make available a detailed tabulation of the total number of prizes of each prize denomination that was actually claimed and paid directly by the Commission.

(d) No prize shall be paid for a lottery ticket or share that is stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or recorded by the Commission by the applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with any additional specific rules and public or confidential validation and security tests appropriate to the particular game involved.

(e) No ~~particular~~ valid claim for a prize in any lottery game shall be paid more than once. The Director, Commission, and the State shall be discharged of all liability upon payment of a prize.

(f) Winners of less than six hundred dollars (\$600.00) shall be permitted to claim prizes from any of the following:

- (1) The same lottery game retailer who sold the winning ticket or share.
- (2) ~~From any~~ Any other lottery retailer.
- (3) ~~Directly from the~~ The Commission.

(g) Winners of six hundred dollars (\$600.00) or more shall claim prizes directly from the Commission.

(h) The right of any person to a prize shall not be assignable. Payment of any prize may be paid to the estate of a deceased prizewinner or to a person designated pursuant to a court order.

(i) No ticket or share in a lottery game shall be purchased by, and no prize shall be paid to, a member of the Commission, the Director, or employee of the Commission, or to any spouse, parent, or child living in the same household as a person disqualified by this subsection.

(j) No prize shall be paid to a person under the age of 18.

(k) If a prize winner submits to the Commission a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with that prize winner or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, that prize winner's identifying information shall be treated as confidential information under G.S. 132-1.2 as long as the protective order remains in effect or the prize winner remains a certified program participant in the Address Confidentiality Program. That prize winner's identifying information shall be available for inspection by a law enforcement agency or by a person identified in a court order if inspection of the address by that person is directed by that court order.

(l) All prizes are subject to the State income tax."

**SECTION 31.1.(k1)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-134, as enacted by that act, reads as rewritten:

**"§ 18C-134. ~~Prize winners with outstanding debts to State agencies, delinquent taxes, or past-due child support; offset. Setoff for debt collection against lottery prizes.~~**

~~(a) Before paying a prize of six hundred dollars (\$600.00) or more to a person who claims to have won the prize, the Commission shall submit the name of that person to the Department of Revenue. The Department of Revenue shall, within 10 days after receiving the name of the person, identify whether that person owes a debt to a State agency as provided in the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall notify the Commission of the amount of the prize subject to debt set-off. The Commission shall remit the amount identified by the Department of Revenue to the Department, and shall pay any remaining funds from the prize to the prizewinner.~~

~~(b) Except as provided in this section, the provisions of Chapter 105A of the General Statutes apply to the funds identified by the Department of Revenue and remitted by the Commission to the Department.~~

(a) Purpose. – The Commission must establish a debt set-off program by which lottery prize payments may be used to satisfy a debt owed or collected by a claimant agency that is at least fifty dollars (\$50.00). The collection remedy under this section is in addition to and not in substitution for any other remedy available by law.

(b) Notification. – A claimant agency seeking to attempt collection of a debt through setoff must notify the Commission in writing and supply information necessary to identify the debtor. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. The agency must notify the Commission in writing when a debt has been paid or is no longer owed the agency. A local agency may not submit a debt for collection under this section until it has met the requirements of G.S. 105A-5, and it must submit the debt to the Commission through one of the entities listed in G.S. 105A-3(b1).

(c) Setoff. – The Commission must match the information submitted by the claimant agency with persons who are entitled to a State lottery prize payment in an amount of six hundred dollars (\$600.00) or more. If there is a match, the Commission must set off the debt against the lottery winnings to which the debtor would otherwise be entitled. When there are multiple claims to be set off, the priority in claims to set off is the same as provided in G.S. 105A-12. The winnings that exceed the amount of the debt, if any, must be paid to that person. The Commission must mail the debtor written notice that the setoff has occurred and must transfer the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

(d) Collection Assistance Fee. – To recover the costs incurred by the Commission in collecting debts under this section, a collection assistance fee of five dollars (\$5.00) may be imposed on each debt collected through setoff. The Commission must collect this fee as part of the debt and retain it. To recover the costs incurred by local agencies in submitting debts for collection under this section, a collection assistance fee of fifteen dollars (\$15.00) may be imposed on each local agency debt collected through setoff. The Commission must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The collection assistance fees do not apply to child support debts. If the Commission is able to collect only part of a debt through setoff, the Commission's collection assistance fee has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt.

(e) Confidentiality. – Notwithstanding any confidentiality statute of a claimant agency, the exchange of information among the Commission, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to implement this section is lawful. The information an agency or organization obtains from the Commission in accordance with the exemption in this subsection may be used by the agency or organization only in the pursuit of its debt collection duties and practices.

(f) Definitions. – The definitions in G.S. 105A-2 apply in this section."

**SECTION 31.1.(I)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-140, as enacted by that act, reads as rewritten:

**"§ 18C-140. Contracting with lottery game retailers.**

The Commission may contract with lottery game retailers to sell tickets or shares for lottery games upon such terms and conditions as it considers appropriate. The contract



entered into between the Commission and the lottery game retailer shall be considered a permit for purposes of Chapter 18B of the General Statutes. No contract to act as a lottery game retailer is assignable or transferable. All contracts with lottery game retailers shall provide that the Director may terminate the contract if the lottery game retailer knowingly violates a provision of this Chapter."

**SECTION 31.1.(m)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-141(b), as enacted by that act, reads as rewritten:

- "(b) The Director may not recommend contracting with any of the following:
- (1) A natural person under 21 years of age. This minimum age shall not prohibit employees of a lottery game retailer who are under 21 years of age from selling lottery tickets or shares during their employment.
  - (2) A person who would be engaged exclusively in the business of selling lottery tickets or shares or operating electronic computer terminals or other devices solely for entertainment.
  - (3) A person who is not current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties owed to the State, excluding items under formal appeal under applicable statutes. Upon request of the Director, the Department of Revenue shall provide this information about a specific person to the Commission.
  - (4) A person who resides in the same household as a member of the Commission, the Director, or any other employee of the Commission."

**SECTION 31.1.(n)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-142, as enacted by that act, reads as rewritten:

**"§ 18C-142. Compensation for lottery game retailers.**

The amount of compensation paid to lottery game retailers for their sales of lottery tickets or shares shall be ~~six percent (6%)~~ seven percent (7%) of the retail price of the tickets or shares sold for each lottery game. The Commission shall ~~authorize an incentive bonus of up to one percent (1%) of the retail price of the tickets or shares sold based on~~ require submission of reports and remission of lottery revenues to the Commission on a timely basis."

**SECTION 31.1.(o)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-143, as enacted by that act, reads as rewritten:

**"§ 18C-143. Responsibilities of lottery game retailers.**

(a) A lottery game retailer shall comply with all provisions of this Article and the contract with the Commission.

(b) A lottery game retailer shall sell no lottery tickets or shares unless the retailer conspicuously displays a certificate of authority, signed by the Director, to sell lottery tickets or shares. The Commission shall issue a certificate of authority to each lottery game retailer for purposes of display for each retail outlet owned or operated by the lottery game retailer. No certificate is assignable or transferable.

(c) A lottery game retailer shall furnish an appropriate bond or letter of credit, if so requested by the Director. The Commission may authorize the Director to purchase blanket bonds covering the activities of any or all lottery game retailers.

(d) The Commission shall adopt rules to establish procedures governing how the lottery game retailers:

- (1) Account for all tickets or shares in their custody, including tickets and shares sold.
- (2) Account for the money collected from the sale of tickets and shares.
- (3) Remit funds to the Commission, provided that all payments shall be in the form of electronic fund transfers or other recorded financial instruments as authorized by the Commission and approved by the Director.

(e) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the Director, to any member or employee of the Commission, or to any member of the immediate family residing in the same household as one of these individuals."

**SECTION 31.1.(p)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-151, as enacted by that act, reads as rewritten:

**"§ 18C-151. Contracts.**

~~(a) Article 8 of Chapter 143 of the General Statutes shall apply to all contracts entered into by the Commission, including the provisions relating to minority participation goals, and the Commission shall be considered a political subdivision of the State for those purposes of contracting under Article 8 of Chapter 143 of the General Statutes. Contracts for the provision of services to the Commission shall be treated as a contract for the purchase of apparatus, supplies, materials, or equipment. The bonding requirements of G.S. 143-129(b) for construction contracts shall apply to all contracts of the Commission and may be waived at the discretion of the Commission. Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of ninety thousand dollars (\$90,000) or more may be awarded by the Commission only after the following have occurred:~~

- (1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
  - a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.

- b. The time and place for opening of the proposals.
  - c. A statement reserving to the Commission the right to reject any or all proposals.
- (2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.
  - (3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 114-19.6.
  - (4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.
  - (5) The Commission may not award a contract to a lottery vendor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.
  - (6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery vendors.
  - (7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.
  - (8) The Commission shall award the contract to the responsible lottery vendor who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor with whom the Commission has previously contracted for the same purposes.

(c) ~~Before a contract required to be let under G.S. 143-129 is awarded, the Director shall conduct an investigation of all of the following:~~ Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

- (1) The vendor to whom the contract is to be awarded.
- (2) Any parent or subsidiary corporation of the vendor to whom the contract is to be awarded.
- (3) All shareholders with a five percent (5%) or more interest in the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.
- (4) All officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the

recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-149. Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery system vendor nor any applicant for a contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals."

**SECTION 31.1.(q)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-152, as enacted by that act, reads as rewritten:

**"§ 18C-152. Investigation of lottery vendors.**

(a) Lottery vendors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) ~~The Commission shall adopt rules that provide for disclosures by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors.~~ of information required to be disclosed under subsection (c) of this section by lottery vendors to ensure that the vendors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery vendors. Information shall be disclosed for the following:

- (1) If the vendor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.
- (2) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.
- (3) If the vendor is an association, the members, officers, and directors.
- (4) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.
- (5) For any vendor, any person who can exercise control or authority, or both, on behalf of the vendor.

(c) For purposes of this subsection, the term "vendor" shall include the vendor and each of the persons applicable under subsection (b) of this section. At a minimum, the vendor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

- (1) Disclose the vendor's name, phone number, and address.

- (2) Disclose all the states and jurisdictions in which the vendor does business and the nature of the business for each state or jurisdiction.
- (3) Disclose all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.
- (4) Disclose all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.
- (5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a minor traffic violation.
- (6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor.
- (7) If at least twenty-five percent (25%) of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.
- (8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.

~~(e)~~(d) All documents compiled by the Director in conducting the investigation of the lottery vendors shall be held as confidential information under Chapter ~~132~~132 of the General Statutes."

**SECTION 31.1.(r)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-162, as enacted by that act, reads as rewritten:

**"§ 18C-162. Allocation of revenues.**

(a) To the extent practicable, the Commission shall allocate revenues to the North Carolina State Lottery Fund in the following manner:

- (1) At least fifty percent (50%) of the total annual revenues, as described in this Chapter, shall be returned to the public in the form of prizes.
- (2) ~~At least thirty four percent (34%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C 164.~~

- ~~(3) No more than sixteen percent (16%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery.~~
- (2) At least thirty-five percent (35%) of the total annual revenues, as described in this Chapter, shall be transferred as provided in G.S. 18C-164.
- (3) No more than eight percent (8%) of the total annual revenues, as described in this Chapter, shall be allocated for payment of expenses of the Lottery. Advertising expenses shall not exceed one percent (1%) of the total annual revenues.
- (4) No more than seven percent (7%) of the total annual revenues, as described in this Chapter, shall be allocated for compensation paid to lottery game retailers.

~~(b) Unclaimed prize money held by the Commission in the North Carolina State Lottery Fund may be used by the Commission to enhance prizes in other lottery games.~~

~~(c) To the extent that the expenses of the Commission are less than sixteen percent (16%) of total annual revenues, the Commission may allocate any surplus funds:~~

- ~~(1) To increase prize payments; or~~
- ~~(2) To the benefit of the public purposes as described in this Chapter.~~

(b) To the extent that the expenses of the Commission are less than eight percent (8%) of total annual revenues, the Commission may allocate any surplus funds:

- (1) To increase prize payments; or
- (2) To the benefit of the public purposes as described in this Chapter.

(c) Unclaimed prize money shall be held separate and apart from the other revenues and allocated as follows:

- (1) Fifty percent (50%) to enhance prizes under subdivision (a)(1) of this section.
- (2) Fifty percent (50%) to the Education Lottery Fund to be allocated in accordance with G.S. 18C-164(c)."

**SECTION 31.1(s)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-163, as enacted by that act, reads as rewritten:

**"§ 18C-163. Expenses of the Lottery.**

Expenses of the Lottery may include any of the following:

- (1) The costs incurred in operating and administering the Commission, including initial start-up costs.
- (2) The costs resulting from any contracts entered into for the purchase or lease of goods or services required by the Commission.
- (3) The compensation paid to lottery game retailers. A transfer of one million dollars (\$1,000,000) annually to the Department of Health and Human Services for gambling addiction education and treatment programs.
- (4) The costs of supplies, materials, tickets, independent studies and audits, data transmission, advertising, promotion, incentives, public

relations, communications, bonding for lottery game retailers, printing, and distribution of tickets and shares.

- (5) The costs of reimbursing other governmental entities for services provided to the Commission.
- (6) The costs for any other goods and services needed to accomplish the purposes of this Chapter."

**SECTION 31.1.(t)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-164, as enacted by that act, reads as rewritten:

**"§ 18C-164. Transfer of net revenues.**

(a) The funds remaining in the North Carolina State Lottery Fund after receipt of all revenues to the Lottery Fund and after accrual of all obligations of the Commission for prizes and expenses shall be considered to be the net revenues of the North Carolina State Lottery Fund. The net revenues of the North Carolina State Lottery Fund shall be transferred periodically to the Education Lottery Fund, which shall be created in the State treasury.

~~(b) On June 30 of each year, the Commission shall distribute the net revenue of the North Carolina State Lottery Fund as follows:~~

- ~~(1) Fifty percent (50%) shall be transferred to the Public School Building Capital Fund created in Article 38A of Chapter 115C of the General Statutes and is appropriated for expenditure in accordance with that Article. It is the purpose of this subdivision for counties to appropriate funds generated under this subdivision to increase the level of county spending for public school capital outlay purposes other than the retirement of indebtedness. A county must continue to spend for public school capital outlay purposes the same amount of money it would have spent for those purposes if it had not received the monies appropriated under this subdivision.~~
- ~~(2) Twenty five percent (25%) shall be transferred to the State Educational Assistance Authority and is appropriated to fund scholarships pursuant to Article 35A of Chapter 115C of the General Statutes.~~
- ~~(3) Twenty five percent (25%) shall be transferred to a special revenue fund to be established in the State treasury and to be known as the Education Enhancement Fund. This fund shall be subject to appropriation by the General Assembly and shall be used to further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential.~~

(b) From the Education Lottery Fund, the Commission shall transfer a sum equal to five percent (5%) of the net revenue of the prior year to the Education Lottery Reserve Fund. A special revenue fund for this purpose shall be established in the State treasury to be known as the Education Lottery Reserve Fund, and that fund shall be capped at fifty million dollars (\$50,000,000). Monies in the Education Lottery Reserve Fund may be appropriated only as provided in subsection (e) of this section.

(c) The Commission shall distribute the remaining net revenue of the Education Lottery Fund, as follows, in the following manner:

- (1) A sum equal to fifty percent (50%) to support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps and to support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
- (2) A sum equal to forty percent (40%) to the Public School Building Capital Fund in accordance with G.S. 115C-546.2.
- (3) A sum equal to ten percent (10%) to the State Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of Chapter 115C of the General Statutes.

(d) Of the sums transferred under subsection (c) of this section, the General Assembly shall appropriate the funds annually based upon estimates of lottery net revenue to the Education Lottery Fund provided by the Office of State Budget and Management and the Fiscal Research Division of the North Carolina General Assembly.

(e) If the actual net revenues are less than the appropriation for that given year, then the Governor may transfer from the Education Lottery Reserve Fund an amount sufficient to equal the appropriation by the General Assembly. If the monies available in the Education Lottery Reserve Fund are insufficient to reach a full appropriation, the Governor shall transfer monies in order of priority, to the following:

- (1) To support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
- (2) To reduce class size.
- (3) To provide financial aid for needy students to attend college.
- (4) To the Public School Building Capital Fund to be spent in accordance with this section.

(f) If the actual net revenues exceed the amounts appropriated in that fiscal year, the excess net revenues shall remain in the Education Lottery Fund, and then be transferred as follows:

- (1) Fifty percent (50%) to the Public School Building Capital Fund to be spent in accordance with this section.
- (2) Fifty percent (50%) to the State Educational Assistance Authority to be spent in accordance with this section."

**SECTION 31.1.(t1)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-170, as enacted by that act, reads as rewritten:

**"§ 18C-170. Preemption of local regulation.**

A county or municipality shall not enact any ~~local law, ordinance, ordinance~~ or regulation relating to the Lottery, and this Chapter preempts all existing county or municipal ~~laws, ordinances, ordinances~~ or regulations that would impose additional



restrictions or requirements in the operation of the Lottery. To the extent that this Chapter conflicts with any local act, this Chapter prevails to the extent of the conflict."

**SECTION 31.1.(u)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 18C-171, as enacted by that act, reads as rewritten:

**"§ 18C-171. Lawful activity.**

Other than this Chapter, any other State or local law, ordinance, or regulation providing any penalty, disability, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter. any other public or local law, ordinance, or regulation providing any penalty, restriction, regulation, or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares, or for the operation of any lottery game shall not apply to the operation of the Commission or lottery games established by this Chapter where the penalty, restriction, regulation, or prohibition applies only to the Lottery as operated by the North Carolina State Lottery Commission."

**SECTION 31.1.(v)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 115C-499.3, as enacted by that act, reads as rewritten:

**"§ 115C-499.3. Scholarship amounts; amounts dependent on net income available.**

(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), Chapter 18C of the General Statutes, a scholarship awarded under this Article to a student at an eligible postsecondary institution shall be based upon the enrollment status and expected family contribution of the student and shall not exceed four thousand dollars (\$4,000) per academic year, including any federal Pell Grant, to be used for the costs of attendance as defined for federal Title IV programs.

(b) Subject to the maximum amounts provided in this section, the Authority shall have the power to determine the actual scholarship amounts disbursed to students in any given year based on the amount of net income available under G.S. 18C-164(b)(2), Chapter 18C of the General Statutes. If the net income available is not sufficient to fully fund the scholarships to the maximum amount, all scholarships shall be reduced equally, to the extent practicable, so that every eligible applicant shall receive the same a proportionate scholarship amount.

(c) The minimum award of a scholarship under this Article shall be one hundred dollars (\$100.00)."

**SECTION 31.1.(v1)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 115C-499.4, as enacted by that act, is amended by adding new subsections to read:

"(c) The Authority may use up to one and one-half percent (1.5%) of the funds transferred in accordance with Chapter 18C of the General Statutes for administrative purposes.

(d) Scholarship funds unexpended shall remain available for future scholarships to be awarded under this Article."

**SECTION 31.1.(v2)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 14-289, as rewritten by Section 3(a) of that act, further reads as rewritten: "**§ 14-289. Advertising lotteries.**

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if anyone by writing or printing or by circular or letter or in any other way, advertises or publishes an account of a lottery, whether within or without this State, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a Class 2 misdemeanor. News medium as defined in G.S. 8-53.11 shall be exempt from this section provided the publishing is in connection with a lawful activity of the news medium."

**SECTION 31.1.(v3)** If House Bill 1023, 2005 Regular Session, becomes law, then Section 4 of that act is repealed.

**SECTION 31.1.(w)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, reads as rewritten:

"**§ 114-19.16. Criminal record checks for the North Carolina State Lottery Commission and its Director.**

The Department of Justice may provide to the North Carolina State Lottery Commission and to its Director from the State and National Repositories of Criminal Histories the criminal history of any prospective employee of the Commission and any prospective lottery ~~retailer or lottery contractor, vendor.~~ The North Carolina State Lottery Commission or its Director shall provide to the Department of Justice, along with the request, the fingerprints of the prospective employee of the Commission, or of the prospective lottery ~~retailer or lottery contractor, vendor,~~ a form signed by the prospective employee of the Commission, or of the prospective ~~lottery retailer or lottery contractor vendor~~ consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the prospective employee of the Commission, or prospective lottery ~~retailer or lottery contractor, vendor,~~ shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The North Carolina State Lottery Commission and its Director ~~shall keep all information obtained pursuant to this section confidential.~~ shall remit any fingerprint information retained by the Commission to alcohol law enforcement agents appointed under Article 5 of Chapter 18B of the General Statutes and shall keep all information obtained pursuant to this section confidential. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

**SECTION 31.1.(w1)** If House Bill 1023, 2005 Regular Session, becomes law, then G.S. 116B-54(f), as enacted by Section 7 of that act, reads as rewritten:

"(f) ~~Prizes that remain unclaimed after the period set by the Commission for claiming those prizes, as provided in G.S. 143D-145(a)(6), are not abandoned property.~~

A lottery prize that remains unclaimed after the period set by the North Carolina State Lottery Commission for claiming those prizes shall not constitute abandoned property."

**SECTION 31.1.(x)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

**"SECTION 10.1.(a)** G.S. 18B-101 is amended by adding a new subdivision to read:

"(8a) 'Lottery law' or 'lottery laws' means any provision of Chapter 18C of the General Statutes and the rules issued by the Lottery Commission under the authority of Chapter 18C of the General Statutes.'"

**SECTION 31.1.(y)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

**"SECTION 10.1.(b)** G.S. 18B-500(b) reads as rewritten:

"(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC ~~laws-laws~~, lottery laws, and Article 5 of Chapter 90 (The Controlled Substances Act); however, an agent may perform any law-enforcement duty assigned by the Secretary of Crime Control and Public Safety or the Governor.""

**SECTION 31.1.(z)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

**"SECTION 10.1.(c)** G.S. 18B-500(d) reads as rewritten:

"(d) Service of Commission Orders. – Alcohol law-enforcement agents may serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control Commission or the North Carolina State Lottery Commission for the surrender of permits or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, alcohol law-enforcement agents shall have all the power and authority possessed by law-enforcement officers when executing an arrest warrant.""

**SECTION 31.1.(aa)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

**"SECTION 10.4.** Effective for taxable years beginning on or after January 1, 2005, G.S. 105-134.5(b) reads as rewritten:

"(b) Nonresidents. – For nonresident individuals, the term "North Carolina taxable income" means the taxpayer's taxable income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this ~~State or State~~, is derived from a business, trade, profession, or occupation carried on in this State; State, or is derived from gambling activities in this State."

**SECTION 31.1.(bb)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.2.(a)** effective for taxable years beginning on or after January 1, 2005, Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-163.2B. North Carolina State Lottery Commission must withhold taxes.**

The North Carolina State Lottery Commission, established by Chapter 18C of the General Statutes, must deduct and withhold State income taxes from the payment of winnings that are reportable to the Internal Revenue Service under section 3406 of the Code. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a return and pay the withheld taxes in the time and manner required under G.S. 105-163.6 as if the winnings were wages. The taxes the Commission withholds are held in trust for the Secretary."

**SECTION 31.1.(cc)** If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

"**SECTION 10.2.(b)** G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...  
(33) To provide to the North Carolina State Lottery Commission the information required under G.S. 18C-141."

**SECTION 31.1.(dd)** If House Bill 1023, 2005 Regular Session, becomes law, the that act is amended by adding a new section to read:

"**SECTION 10.3.** G.S. 105-134 reads as rewritten:

**"§ 105-134. Purpose.**

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

- (1) Of every resident of this State.
- (2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State ~~or deriving State, deriving~~ income from a business, trade, profession, or occupation carried on in this State, ~~State, or deriving income from gambling activities in this State."~~

**SECTION 31.1.(ee)** If House Bill 1023, 2005 Regular Session, becomes law, then Section 11 of that act is repealed.

**SECTION 31.1.(ff)** If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

"**SECTION 11.1.** G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.

- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) The Industrial Commission.
- (5) The Employment Security Commission.
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery."

**SECTION 31.1.(gg)** If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

**"SECTION 15.1.** Notwithstanding G.S. 18C-164, as enacted by Section 1 of this act, all net revenues for fiscal year 2005-2006 shall be transferred to the Education Lottery Reserve Fund."

**SECTION 31.1.(hh)** If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

**"SECTION 15.2.** G.S. 115C-546.2 is amended by adding a new subsection to read:

"(d) Monies transferred into the Fund in accordance with Chapter 18C of the General Statutes shall be allocated for capital projects for school construction projects as follows:

- (1) A sum equal to sixty-five percent (65%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education.
- (2) A sum equal to thirty-five percent (35%) of those monies transferred in accordance with G.S. 18C-164 shall be allocated to those local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the effective State average tax rate is greater than one hundred percent (100%), with the following definitions applying to this subdivision:
  - a. "Effective county tax rate" means the actual county tax rate multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies.
  - b. "State average effective tax rate" means the average effective county tax rates for all counties.
  - c. "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (3) No county shall have to provide matching funds required under subsection (c) of this section.
- (4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness

incurred for school construction projects incurred on or after January 1, 2003.

- (5) A county may not use monies in this Fund to pay for school technology needs."

**SECTION 31.1(ii)** If House Bill 1023, 2005 Regular Session, becomes law, then a new section is added to that act to read:

**"SECTION 15.3.** Notwithstanding G.S. 18C-162(c), the General Assembly shall transfer the unclaimed prize money from the North Carolina State Lottery Fund to the Escheat Fund in an amount equal to the principal transferred from the Escheat Fund for scholarships in fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007 until the Escheat Fund is repaid for any amounts of principal appropriated in those fiscal years, if any."

## **PART XXXIII. SALES TAX CHANGES**

### **SALES TAX CHANGES**

**SECTION 33.1.** Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284 and Section 9.1 of S.L. 2005-144, reads as rewritten:

**"SECTION 34.13(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after the date that Senate Bill 622, 2005 Regular Session, the 2005 Appropriations Act, becomes law. In no event is the tax extended beyond December 31, 2005. July 1, 2007. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

**SECTION 33.2.** Subdivisions (4a) and (4b) of G.S. 105-164.3 are recodified as subdivisions (4b) and (4c) respectively.

**SECTION 33.3.** G.S. 105-164.3, as amended by Section 33.2 of this part, reads as rewritten:

#### **"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...  
(1a) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...  
(4a) Combined general rate. – The State's general rate of tax set in G.S. 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State.

...

(4d) Computer supply. – An item that is considered a 'school computer supply' under the Streamlined Agreement.

...

(10) Food. – Substances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco products, product, as defined in G.S. 105-113.4.

...

(37a) Satellite digital audio radio service. – A radio communication service in which audio programming is digitally transmitted by satellite to an earth-based receiver, whether directly or via a repeater station.

(37b) School supply. – An item that is commonly used by a student in the course of study and is considered a 'school supply', a 'school art supply', or 'school instructional material' under the Streamlined Agreement.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement adopted November 12, 2002, as amended on November 19, 2003, November 16, 2004, and April 16, 2005."

**SECTION 33.4.(a)** G.S. 105-164.4(a), as amended by Section 33.1 of this part, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4.5%).

...

(4c) The rate of six percent (6%) combined general rate applies to the gross receipts derived from providing telecommunications service. A person who provides telecommunications service is considered a retailer under this Article. Telecommunications service is taxed in accordance with G.S. 105-164.4C.

...

(6) The rate of five percent (5%) combined general rate applies to the gross receipts derived from providing ~~direct to home satellite service to subscribers in this State~~ any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing ~~direct to home satellite service~~ any of these services is considered a retailer under this ~~Article~~ Article:

a. Direct-to-home satellite service.

b. Reserved.

...

(7) The rate of six percent (6%) combined general rate applies to the sales price of spirituous liquor other than mixed beverages. As used in this

subdivision, the terms 'spirituous liquor' and 'mixed beverage' have the meanings provided in G.S. 18B-101.

...."

**SECTION 33.4.(b)** G.S. 105-164.4(a), as amended by Section 33.1 of this part and subsection (a) of this section, reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4.5%).

...

(1b) The rate of three percent (3%) applies to the sales price of each ~~aircraft, boat, railway car, or locomotive~~ aircraft or boat sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.

(1c) ~~The rate of one percent (1%) applies to the sales price of the following articles:~~

a. ~~Horses or mules by whomsoever sold.~~

b. ~~Semen to be used in the artificial insemination of animals.~~

c. ~~Sales of fuel, other than electricity, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed by this subdivision.~~

d. ~~Sales of fuel, other than electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.~~

e. ~~Sales of fuel, other than electricity, to commercial laundries or to pressing and dry cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.~~

f. ~~Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.~~

(1d) ~~The rate of one percent (1%) applies to the sales price of the articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars (\$80.00) per article. As used in G.S. 105-164.4A and G.S. 105-187.51, the term "accessories" does not include electricity.~~

a. ~~through k. Recodified as § 105-164.4A by Session Laws 1999-360, s. 3(a), effective August 4, 1999.~~



(1e) ~~The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.~~

...

(6) The combined general rate applies to the gross receipts derived from providing any of the following broadcast services to a subscriber in this State. A person engaged in the business of providing any of these services is considered a retailer under this Article:

- a. Direct-to-home satellite service.
- b. Cable service.

(6a) The general rate applies to the gross receipts derived from providing satellite digital audio radio service. For services received by a mobile or portable station, the service is sourced to the subscriber's business or home address. A person engaged in the business of providing satellite digital audio radio service is a retailer under this Article.

...."

**SECTION 33.5.** G.S. 105-164.4A is repealed.

**SECTION 33.6.** G.S. 105-164.4C(b)(2) reads as rewritten:

"(2) Charges for directory assistance, directory listing that is not yellow-page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services."

**SECTION 33.7.** G.S. 105-164.4C(c)(11) is repealed.

**SECTION 33.8.** G.S. 105-164.6 reads as rewritten:

**"§ 105-164.6. Imposition of Complementary use tax.**

(a) Tax. – An excise tax at the following percentage rates is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside or outside the State for storage, use, or consumption in the State: at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

(1) ~~At the applicable percentage rate of the purchase price of each item or article of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is stored, used, or consumed.~~ Tangible personal property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.

(2) ~~At the applicable percentage rate of the monthly lease or rental price paid, contracted, or agreed to be paid by the lessee or renter to the~~

~~owner of tangible personal property that is stored, used, or consumed in this State. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a lease or rental of the property that is stored, used, or consumed. Tangible personal property leased or rented inside or outside this State for storage, use, or consumption in this State.~~

(3) Services sourced to this State.

~~(b) An excise tax at the general rate of tax set in G.S. 105-164.4 is imposed on the purchase price of tangible personal property purchased inside or outside the State that~~Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or who purchases a service. If the property purchased becomes a part of a building or other structure in the State. The purchaser of the property is liable for the tax. If the purchaser is a contractor, the contractor and owner are jointly and severally liable for the tax; if~~State and the purchaser is a subcontractor, the subcontractor and contractor~~contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of an owner or a contractor~~a contractor, a subcontractor, or an owner who did not purchase the property is satisfied if the purchaser delivers to the owner or contractor before final settlement between them~~by receipt of an affidavit from the purchaser certifying that the tax has been paid.

~~(c) Where a retail sales tax has already been paid with respect to tangible personal property in this State by the purchaser thereof, the tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to tangible personal property in another state by the purchaser for storage, use or consumption in this State, the tax shall be credited upon the tax imposed by this Part.~~Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales tax paid on the item to another state. If the amount of tax paid to another~~the other~~state is less than the amount of tax imposed by this Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems necessary. No credit shall be given under this subsection for sales or use taxes paid in another state if that~~section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.~~

~~(d) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished~~

~~until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased the property.~~

~~(e) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.~~

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

**SECTION 33.9.** G.S. 105-164.13 reads as rewritten:

**"§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

- ...
- (1) ~~Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, and seeds~~Any of the following items sold to a farmer for agricultural purposes: use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.
    - a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, and seeds.
    - b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term 'machinery' includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
    - c. A horse or mule.
    - d. Fuel other than electricity.
  - (1a) A container sold to a farmer, as defined in subdivision (1) of this section, used for a purpose set out in that subdivision or in packaging and transporting the farmer's product for sale.
- ...

- (2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:
- a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliants for use on cotton or other crops.
  - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - e. Semen.

...

- (4c) Any of the ~~following~~following items concerning the housing, raising, or feeding of animals:
- a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.
  - b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.
  - c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.

- (4d) Any of the following tobacco items:
- a. The lease or rental of tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.
  - b. A metal flue sold for use in curing tobacco, whether the flue is attached to a handfired furnace or used in connection with a mechanical burner.
  - c. A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

- (4e) A grain, feed, or soybean storage facility, and parts and accessories attached to the facility.

...

- (5a) ~~Mill machinery and mill machinery parts and accessories~~ Products that are subject to tax under Article 5F of this Chapter.
- (5b) Sales to a telephone company regularly engaged in providing telephone service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.
- (5c) Sales of towers, broadcasting equipment, and parts and accessories attached to the equipment to a radio or television company licensed by the Federal Communications Commission.
- (5d) Sales of broadcasting equipment and parts and accessories attached to the equipment to a cable service provider. For the purposes of this subdivision, 'broadcasting equipment' does not include cable.
- ...
- (10) Sales of the following to commercial laundries or to pressing and dry cleaning ~~establishments of articles~~ establishments:
  - a. Articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.
  - b. Laundry and dry-cleaning machinery, parts and accessories attached to the machinery, and lubricants applied to the machinery.
  - c. Fuel, other than electricity, used in the direct performance of the laundering or the pressing and cleaning service.
- (10a) Sales of the following to a major recycling ~~facility of (i) lubricants~~ facility:
  - a. Lubricants and other additives for motor vehicles or machinery and equipment used at the ~~facility and (ii) materials,~~ facility.
  - b. Materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.
  - (10b) c. ~~Sales to a major recycling facility of electricity~~ Electricity used at the facility.
- ...
- (18) ~~Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars (\$1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to~~

~~G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.~~

...

- (45) Sales of the following items to an interstate passenger air carrier ~~or an interstate air courier~~ for use at its ~~hub: aircraft lubricants, aircraft repair parts, and aircraft accessories.~~hub:
- a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.
  - b. Aircraft simulators for flight crew training.

...

- (45b) Sales of the following items to an interstate air courier for use at its hub:
- a. Aircraft lubricants, aircraft repair parts, and aircraft accessories.
  - b. Materials handling equipment, racking systems, and related parts and accessories for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility.

...."

**SECTION 33.10.** G.S. 105-164.13B(a) reads as rewritten:

"(a) State Exemption. – Food is exempt from the taxes imposed by this Article unless the food is included in one of the subdivisions in this subsection. The following food items are subject to tax:

- (1) ~~Alcoholic beverages, as defined in G.S. 105-113.68.~~
- (2) Dietary supplements.
- (3) Food sold through a vending machine.
- (4) Prepared food.
- (5) Soft drinks.
- (6) Repealed.
- (7) Candy."

**SECTION 33.11.** G.S. 105-164.13C(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the following items of tangible personal property if sold between 12:01A.M. on the first Friday of August and 11:59 P.M. the following Sunday:

- (1) Clothing with a sales price of one hundred dollars (\$100.00) or less per item.
- (2) School supplies with a sales price of one hundred dollars (\$100.00) or less per item.
- (3) Computers with a sales price of three thousand five hundred dollars (\$3,500) or less per item.

- (3a) Computer supplies with a sales price of two hundred fifty dollars (\$250.00) or less per item.
- (4) Sport or recreational equipment with a sales price of fifty dollars (\$50.00) or less per item."

**SECTION 33.12.** G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

**SECTION 33.13.** Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

- (1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date.
- (2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

**SECTION 33.14.** Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.21B. Credit for local cable television franchise taxes.**

A cable service provider is allowed a credit against the tax imposed by G.S. 105-164.4(a)(6) for the amount of local franchise tax payable under G.S. 153A-154 and G.S. 160A-214 on its gross receipts for cable service. To comply with G.S. 105-164.4(a)(6) and apply the credit allowed under this section, a cable service provider may collect tax from its subscribers at the rate set in G.S. 105-164.4(a)(6) less the rate of the local franchise tax payable on its gross receipts for cable service."

**SECTION 33.15.** G.S. 105-164.28 reads as rewritten:

**"§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) For a sale made in person, the certificate is signed by the ~~purchaser,~~ purchaser and states the purchaser's name, address, ~~and~~ registration number, and ~~describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~ type of business.
- (2) For a sale made in person, the ~~purchaser is engaged in the business of selling tangible personal property of the type sold.~~ sold is the type of property typically sold by the type of business stated on the certificate.
- (3) For a sale made over the Internet or by other remote means, ~~the sales tax registration number given by the purchaser matches the number on the Department's registry;~~ the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) ~~Liabilities. Purchaser's Liability.~~ – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. ~~A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."~~

**SECTION 33.16.** G.S. 105-164.42B(1) reads as rewritten:

**"§ 105-164.42B. Definitions.**

The following definitions apply in this Part:

- (1) Agreement. – ~~The Streamlined Sales and Use Tax Agreement.~~ Agreement, as defined in G.S. 105-164.3.

...."

**SECTION 33.17.** Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:



**"§ 105-164.42K. Registration and effect of registration.**

Registration under the Agreement satisfies the registration requirements under this Article. A seller who registers under the Agreement within 12 months after the State becomes a member of the Agreement and who meets the following conditions is not subject to assessment for sales tax for any period before the effective date of the seller's registration:

- (1) The seller was not registered with the State during the 12-month period before the effective date of this State's participation in the Agreement.
- (2) When the seller registered, the seller had not received a letter from the Department notifying the seller of an audit.
- (3) The seller continues to be registered under the Agreement and to remit tax to the State for at least 36 months."

**SECTION 33.18.** Part 7A of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.42L. Databases on taxing jurisdictions.**

The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A seller that relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

**SECTION 33.19.** G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a) (4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and ~~twenty six hundredths~~ three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the 'freeze deduction.' The Secretary must distribute the specified percentage of the proceeds, less the 'freeze deduction' among the cities in accordance with this section."

**SECTION 33.20.** The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Mill Machinery-~~Manufacturing Fuel and Certain Machinery and Equipment."

**SECTION 33.21.** Article 5F of Chapter 105 of the General Statutes is amended by adding new sections to read:

**"§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is one percent (1%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas.

**"§ 105-187.51B. Tax imposed on recycling equipment.**

(a) Tax. – A privilege tax is imposed on a major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

- (1) Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
- (2) Port and dock facilities.
- (3) Rail equipment.
- (4) Material handling equipment.

(b) Rate. – The tax is one percent (1%) of the sales price of the tangible personal property. The maximum tax is eighty dollars (\$80.00) per article."

**SECTION 33.22.** G.S. 105-187.52 reads as rewritten:

"§ **105-187.52. Administration.**

~~The privilege tax this Article imposes on a person listed in G.S. 105-187.51 is an additional tax.~~ taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of this tax these taxes is the same as the State use tax imposed by Article 5 of this Chapter."

**SECTION 33.23.** G.S. 105-467(a) is amended by adding a new subdivision to read:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

...

- (7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a)."

**SECTION 33.24.** Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284, reads as rewritten:

"**Section 18.** Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, ~~2005.~~ 2010. The remainder of this act is effective when it becomes law."

**SECTION 33.25.** G.S. 105-151.21(b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this section:

- (1) Farm machinery. – Machinery subject to exempt from State sales tax at the rate of one percent (1%) under G.S. ~~105-164.4A.~~ 105-164.13(1)b.
- (2) Property taxes. – The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.
- (3) Taxing unit. – Defined in G.S. 105-273."

**SECTION 33.26.** Subdivision (b)(5) of Section 5 of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws and S.L. 2001-347, reads as rewritten:

"(b) Definitions. The definitions in G.S. 105-164.3 apply to this Part insofar as they are not inconsistent with the provisions of this Part. In addition, the following definitions apply in this Part:

...

- (5) Prepared Food and Beverages. ~~– The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:
  - a. Prepared food, as defined in G.S. 105-164.3.
  - b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

**SECTION 33.27.** Subdivision (a)(2) of Section 2 of Chapter 413 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions; Sales and Use Tax Statutes. – (a) The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. In addition, the following definitions apply in this act:

...

- (2) Prepared food and beverages. ~~– The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:
  - a. Prepared food, as defined in G.S. 105-164.3.
  - b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

**SECTION 33.28.** Section 2 of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, Chapter 177 of the 1991 Session Laws, and S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax.
- (2) Prepared food and beverages. ~~– The term has the same meaning as the term "prepared food" in G.S. 105-164.3.~~ includes the following:
  - a. Prepared food, as defined in G.S. 105-164.3.
  - b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

**SECTION 33.29.** Subsection (b) of Section 1 of Chapter 449 of the 1993 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"(b) Definitions; Sales and Use Tax Statutes. – The definitions in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section. ~~In addition,~~ For the purposes of this section, the term 'prepared food and beverages' has the same meaning as the term "prepared food" in G.S. 105-164.3. includes the following:

- (1) Prepared food, as defined in G.S. 105-164.3.
- (2) An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this section to the extent they are not inconsistent with the provisions of this section."

**SECTION 33.30.** Subdivision (3) of Section 2 of Chapter 594 of the 1991 Session Laws, as amended by S.L. 2001-347, reads as rewritten:

"Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

...

(3) Prepared food and beverage. ~~— The term has the same meaning as the term "prepared food" in G.S. 105-164.3, includes the following:~~

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

**SECTION 33.31.** Section 3.1 of S.L. 2001-347, as amended by Section 13 of S.L. 2003-416, reads as rewritten:

~~"SECTION 3.1. Part 1 of this act is effective when it becomes law and expires January 1, 2006, unless one of the following occurs: (i) 15 states have adopted the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have adopted the Agreement. law."~~

**SECTION 33.32.** The Revenue Laws Study Committee shall study the issues listed in this section. The Committee may make an interim report on these issues, including any recommendations for legislation, to the 2006 Regular Session of the 2005 General Assembly and shall make a final report to the 2007 General Assembly.

(1) The equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

(2) The application of sales and use tax to maintenance agreements. It is the intent of the General Assembly to apply the sales and use tax, in some manner, to maintenance agreements beginning July 1, 2006.

**SECTION 33.33.** S.L. 2004-123 is reenacted and is amended by adding a new section to read:

"SECTION 3.1. This act applies to Dare County only."

**SECTION 33.34.** Sections 33.1, 33.24, and 33.31 through 33.34 of this part are effective when they become law. Sections 33.4(b), 33.5, 33.9, 33.12, 33.14, and 33.20 through 33.23 become effective January 1, 2006. Section 33.25 of this part is effective for taxable years beginning on or after January 1, 2006. The remainder of this part becomes effective October 1, 2005. For prepayments of telecommunications and direct-to-home satellite services, the first billing period is considered to start on or after November 1, 2005. For prepayments of satellite digital audio radio services, the first billing period is considered to start on or after February 1, 2006. Section 33.19 of this part applies to distributions to cities of the net proceeds of the sales tax imposed on

telecommunications service under G.S. 105-164.4(a)(4c) collected during calendar quarters that begin on or after January 1, 2006.

## **PART XXXIV. TOBACCO TAX RATE CHANGES**

### **TOBACCO TAX CHANGES**

**SECTION 34.1.(a)** G.S. 105-113.5 reads as rewritten:

**"§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~two and one-half mills~~ one and one-half cents (1.50¢) per individual cigarette."

**SECTION 34.1.(b)** G.S. 105-113.5, as amended by subsection (a) of this section, reads as rewritten:

**"§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~one and one-half cents (1.50¢)~~ one and three-fourths cents (1.75¢) per individual cigarette."

**SECTION 34.1.(c)** G.S. 105-113.35(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ~~two percent (2%)~~ three percent (3%) of the cost price of the products. This tax does not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge."

**SECTION 34.1.(d)** Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-16.6. Assignment to the State of rights to tobacco manufacturer escrow funds.**

A tobacco product manufacturer that elects to place funds into escrow pursuant to G.S. 66-291(a)(2) may make an assignment of its interest in the funds to the benefit of the State. The assignment applies to all funds, and any earnings and appreciation, that are in the escrow account at the time of the assignment or are subsequently deposited into the escrow account and are not released under the provisions of subdivision (1) or (2) of G.S. 66-291(b) at any time on or before the expiration of 10 years from the date of assignment. The assignment is irrevocable and shall include any reversionary interest in the escrow account and the funds therein that would otherwise belong to the tobacco manufacturer, including the right to receive the escrowed funds pursuant to G.S. 66-291(b)(3).

An assignment of rights executed pursuant to this section shall be in writing and shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment. An assignment is effective upon delivery to the Attorney General and the financial institution where the escrow account is maintained."

**SECTION 34.1.(e)** Subsections (d) and (e) of this section are effective when they become law. Subsection (b) of this section becomes effective July 1, 2006. The

remainder of this section becomes effective September 1, 2005. If a final judgment by a court of competent jurisdiction declares that G.S. 143-16.6, as enacted by this section, is invalid or unenforceable, then the statute is repealed, and any assignment made under it is void. If, as a result of a final judgment, it is determined that G.S. 143-16.6, as enacted by this section, would subject payments to this State by participating manufacturers under the Master Settlement Agreement, as defined in G.S. 66-290, to a Non-Participating Manufacturer Adjustment under Section IX of that Agreement, then G.S. 143-16.6 is repealed, and any assignment made under it is void.

## **PART XXXV. IRC UPDATE**

### **IRC UPDATE**

**SECTION 35.1.(a)** G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2004,~~ January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date~~ date, but not including the amendments made to section 164 of the Code by section 501 of P.L. 108-357."

**SECTION 35.1.(b)** G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) The amount excluded from gross income under section 199 of the Code."

**SECTION 35.1.(c)** Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2004, that increase North Carolina taxable income for the 2004 taxable year become effective for taxable years beginning on or after January 1, 2005.

**SECTION 35.1.(d)** G.S. 105-228.90(b)(1b), as amended by subsection (a) of this section, reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of January 1, 2005, including any provisions enacted as of that date which become effective either before or after that ~~date~~, ~~but not including the amendments made to Section 164 of the Code by Section 501 of P.L. 108-357.~~ date."

**SECTION 35.1.(e)** G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...  
(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax or as state or local general sales tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.

...  
(9) The amount excluded from gross income under section 199 of the Code."

**SECTION 35.1.(f)** Notwithstanding any other provision of law, a taxpayer whose federal taxable income for 2004 is reduced due to a charitable contribution of cash made in January 2005 for Indian Ocean tsunami relief efforts in accordance with P.L. 109-1 is not required to add back the amount of the deduction related to that contribution in determining North Carolina taxable income for 2004.

**SECTION 35.1.(g)** Subsections (b), (d), and (e) of this section become effective for taxable years beginning on or after January 1, 2005. The remainder of this section is effective when it becomes law.

## **PART XXXVI. INDIVIDUAL INCOME TAX CHANGES**

### **INDIVIDUAL INCOME TAX RATE**

**SECTION 36.1.(a)** The lead-in language of Section 39.1 of S.L. 2003-284 reads as rewritten:

"**SECTION 39.1.** Effective for taxable years beginning on or after January 1, ~~2006,~~ 2008, G.S. 105-134.2(a) reads as rewritten:"

**SECTION 36.1.(b)** This section is effective when it becomes law.

## **PART XXXVIII. CORPORATE, EXCISE, AND INSURANCE TAX CHANGES**

### **EQUALIZE GROSS PREMIUMS TAX**

**SECTION 38.4.(a)** G.S. 105-228.5(d)(6) is repealed.

**SECTION 38.4.(b)** G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. – There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this ~~section.~~ section and is applied to the company's premium tax liability for the taxable year. ~~For each insurance company that is not a health maintenance organization, the rate~~ is applied to the ~~company's premium tax liability for the taxable year.~~ For health maintenance organizations, the rate is applied to a premium tax liability for the taxable year

~~calculated as if the corporation or organization were paying tax at the rate in G.S. 105-228.5(d)(2).~~ In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

- (1) Additional taxes imposed by G.S. 105-228.8.
- (2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).
- (3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).
- (4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer."

**SECTION 38.4.(c)** Notwithstanding the provisions of G.S. 105-228.5(f), the following provisions apply to health maintenance organizations for the 2007 taxable year in lieu of the provisions of G.S. 105-228.5(f):

Health maintenance organizations that are subject to the tax imposed by G.S. 105-228.5 and have an estimated premium tax liability for the taxable year, not including the additional local fire and lightning tax, of ten thousand dollars (\$10,000) or more for business done in North Carolina shall remit two estimated tax payments with each payment equal to fifty percent (50%) of the taxpayer's estimated premium tax liability for the 2007 taxable year. The first estimated payment is due on or before April 15, 2007, and the second estimated payment is due on or before June 15, 2007. The taxpayer must remit the balance by the following March 15 in the same manner provided in G.S. 105-228.5(e) for annual returns.

An underpayment of an estimated payment required by this subsection bears interest at the rate established under G.S. 105-241.1(i). Any overpayment bears interest as provided in G.S. 105-266(b) and, together with the interest, must be credited to the taxpayer and applied against the taxes imposed upon the company under G.S. 105-228.5.

The penalties provided in Article 9 of Chapter 105 of the General Statutes apply to the estimated tax payments required by this subsection.

**SECTION 38.4.(d)** This section is effective for taxable years beginning on or after January 1, 2007.

## **PART XXXIX. TAX INCENTIVES / FILM INDUSTRY JOBS INCENTIVES**

### **FILM INDUSTRY JOBS INCENTIVES**

**SECTION 39.1.(a)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-130.47. Credit for qualifying expenses of a production company.**

(a) Definitions. – The following definitions apply in this section:

- (1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars (\$1,000,000) with respect to a single production.



(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

- a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.
- b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

- (1) It is political advertising.
- (2) It is a television production of a news program or sporting event.

(3) It contains material that is obscene, as defined in G.S. 14-190.1.

(4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The location of sites used in a production for which a credit was claimed.

(2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

(3) The number of people employed in the State with respect to credits claimed.

(4) The total cost to the General Fund of the credits claimed.

(i) No Double Benefit. – A taxpayer may not claim a credit under this section for qualifying expenses for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(18).

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

**SECTION 39.1.(b)** Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-151.29. Credit for qualifying expenses of a production company.**

(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars (\$1,000,000) with respect to a single production.

(2) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

(3) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed seven million five hundred thousand dollars (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

- (1) It is political advertising.
- (2) It is a television production of a news program or sporting event.
- (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- (4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer for the 12-month period ending the preceding December 31:

- (1) The location of sites used in a production for which a credit was claimed.
- (2) The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to credits claimed.
- (4) The total cost to the General Fund of the credits claimed.

(i) No Double Benefit. – A taxpayer may not claim a credit under this section for qualifying expenses for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-134.6(c)(9).

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2010."

**SECTION 39.1.(c)** G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
- (34) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions and to publish the reports required under those sections."

**SECTION 39.1.(d)** G.S. 143B-434.4 is repealed.

**SECTION 39.1.(e)** G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

- ...
- (18) To the extent not included in federal taxable income, the amount of qualifying expenses for which the taxpayer claims a credit under G.S. 105-130.47."

**SECTION 39.1.(f)** G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

- ...
- (9) The amount of qualifying expenses for which the taxpayer claims a credit under G.S. 105-130.47."

**SECTION 39.1.(g)** Subsection (d) of this section becomes effective July 1, 2005. The remainder of this section is effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005.

## **PART XL. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES**

### **INSURANCE REGULATORY CHARGE**

**SECTION 40.1.(a)** The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2005 calendar year.

**SECTION 40.1.(b)** This section is effective when it becomes law.

### **REGULATORY FEE FOR UTILITIES COMMISSION**

**SECTION 40.2.(a)** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2005.

**SECTION 40.2.(b)** The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2005-2006 fiscal year is two hundred thousand dollars (\$200,000).

**SECTION 40.2.(c)** This section becomes effective July 1, 2005.

## **PART XLI. HEALTH AND HUMAN SERVICES FEES**

### **NEWBORN SCREENING FEE**

**SECTION 41.1.(a)** G.S. 130A-125(c) reads as rewritten:

"(c) ~~The Department may impose a fee for a laboratory test performed pursuant to this section by the State Public Health Laboratory. A fee for a test must be based on the actual cost of performing the test. A fee of fourteen dollars (\$14.00) applies to a laboratory test performed by the State Public Health Laboratory performed pursuant to this section.~~ Fees collected shall remain in the Department to be used to offset the cost of the Newborn Screening Program."

**SECTION 41.1.(b)** This section becomes effective August 15, 2005, and applies to laboratory tests performed on or after that date.

### **DIVISION OF FACILITY SERVICES FEES**

**SECTION 41.2.(a)** G.S. 131D-2(b)(1), as amended by Section 10.40A.(i) of Senate Bill 622, 2005 General Assembly, reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this

Chapter and rules adopted pursuant thereto, the Department shall issue a license for the balance of the calendar year. Licenses renewed under the authority of this section shall be valid for one year from the date of renewal unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~one hundred twenty five dollars (\$125.00)~~ two hundred fifty dollars (\$250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~one hundred seventy five dollars (\$175.00)~~ three hundred fifty dollars (\$350.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty five cents (\$6.25)~~ twelve dollars and fifty cents (\$12.50). A license shall not be renewed if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
- b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

- a. The Department finds that:
  1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- b. The Department finds that:
  1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
  2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

**SECTION 41.2.(b)** G.S. 131E-77(d) reads as rewritten:

"(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

<b>Facility Type</b>	<b>Number of Beds</b>	<b>Base Fee</b>	<b>Per-Bed Fee</b>
General Acute Hospitals:	1-49 beds	<del>\$125.00</del> <u>250.00</u>	<del>\$6.25</del> <u>12.50</u>
	50-99 beds	<del>\$175.00</del> <u>350.00</u>	<del>\$6.25</del> <u>12.50</u>
	100-199 beds	<del>\$225.00</del> <u>450.00</u>	<del>\$6.25</del> <u>12.50</u>
	200-399 beds	<del>\$275.00</del> <u>550.00</u>	<del>\$6.25</del> <u>12.50</u>
	400-699 beds	<del>\$375.00</del> <u>750.00</u>	<del>\$6.25</del> <u>12.50</u>
	700+ beds	<del>\$475.00</del> <u>950.00</u>	<del>\$6.25</del> <u>12.50</u>

Other Hospitals: ~~\$250.00~~500.00      ~~\$6.25~~12.50"

**SECTION 41.2(c)** G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~two hundred twenty five dollars (\$225.00)~~four hundred fifty dollars (\$450.00) plus a nonrefundable annual per-bed fee of ~~six dollars and twenty five cents (\$6.25)~~twelve dollars and fifty cents (\$12.50)."

**SECTION 41.2(d)** G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~one hundred seventy five dollars (\$175.00)~~three hundred fifty dollars (\$350.00)."

**SECTION 41.2(e)** G.S. 131E-147(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~three hundred fifty dollars (\$350.00)~~seven hundred dollars (\$700.00) plus a nonrefundable annual per-operating room fee in the amount of ~~twenty five dollars (\$25.00)~~fifty dollars (\$50.00)."

**SECTION 41.2(f)** G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~one hundred twenty five dollars (\$125.00)~~two hundred fifty dollars (\$250.00)."

**SECTION 41.2(g)** G.S. 131E-269 reads as rewritten:

**"§ 131E-269. Authorization to charge fee for certification of facilities suitable to perform abortions.**

The Department of Health and Human Services shall charge each hospital or clinic certified by the Department as a facility suitable for the performance of abortions, as



authorized under G.S. 14-45.1, a nonrefundable annual certification fee in the amount of ~~three hundred fifty dollars (\$350.00)~~ seven hundred dollars (\$700.00)."

**SECTION 41.2(h)** G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter that have licensed beds a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non-ICF/MR):	6 or fewer beds	<del>\$125.00</del> <u>250.00</u>	\$0
	More than 6 beds	<del>\$175.00</del> <u>350.00</u>	<del>\$6.25</del> <u>12.50</u>
ICF/MR Only:	6 or fewer beds	<del>\$325.00</del> <u>650.00</u>	\$0
	More than 6 beds	<del>\$325.00</del> <u>650.00</u>	<del>\$6.25</del> <u>12.50</u> "

**SECTION 41.2(i)** G.S. 131E-138.1 reads as rewritten:

**"§ 131E-138.1. Licensure fees for nursing beds and adult care home beds in continuing care retirement communities.**

The Department shall charge continuing care retirement communities licensed under Article 64 of Chapter 58 of the General Statutes that have nursing home beds or adult care home beds licensed by the Department a nonrefundable annual base license fee in the amount of ~~two hundred twenty five dollars (\$225.00)~~ four hundred fifty dollars (\$450.00) plus a nonrefundable annual per-bed fee in the amount of ~~six dollars and twenty five cents (\$6.25)~~ twelve dollars and fifty cents (\$12.50)."

**SECTION 41.2(j)** G.S. 131E-267 reads as rewritten:

**"§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed twelve thousand five hundred dollars (\$12,500) for any single project:

Institutional Project	Project Fee
Hospitals	<del>\$150.00 plus \$0.10/square foot of project space</del> <u>\$300.00 plus \$0.20/square foot of project space</u>
Nursing Homes	<del>\$125.00 plus \$0.08/square foot of project space</del> <u>\$250.00 plus \$0.16/square foot of project space</u>
Ambulatory Surgical Facility	<del>\$100.00 plus \$0.08/square foot of project space</del> <u>\$200.00 plus \$0.16/square foot of project space</u>
Psychiatric Hospital	<del>\$100.00 plus \$0.08/square foot of project space</del> <u>\$200.00 plus \$0.16/square foot of project space</u>
Adult Care Home <del>more than 7 beds</del> <u>7 or more beds</u>	<del>\$87.00 plus \$0.05/square foot of project space</del> <u>\$175.00 plus \$0.10/square foot of project space</u>
<b>Residential Project</b>	<b>Project Fee</b>
Family Care Homes	<del>\$87.00</del> <u>175.00</u> flat fee
ICF/MR Group Homes	<del>\$137.00</del> <u>275.00</u> flat fee

Group Homes: 1-3 beds	<del>\$50.00</del> <u>100.00</u> flat fee
Group Homes: 4-6 beds	<del>\$87.00</del> <u>175.00</u> flat fee
Group Homes: 7-9 beds	<del>\$112.00</del> <u>225.00</u> flat fee
Other residential: More than 9 beds	<del>\$112.00</del> <u>225.00</u> plus \$ <del>0.038</del> / <u>0.075</u> /square foot of project space."

**SECTION 41.2.(k)** This section becomes effective October 1, 2005.

## **PART XLII. NATURAL AND ECONOMIC RESOURCES FEES**

### **INCREASE VARIOUS AGRICULTURE FEES**

**SECTION 42.1.(a)** G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars (\$3.00)~~ five dollars (\$5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ~~ten dollars (\$10.00)~~ twelve dollars (\$12.00) for each canned pet food shall accompany each request for registration."

**SECTION 42.1.(b)** G.S. 106-284.40(b)(4) reads as rewritten:

"(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00) shall be paid in lieu of the inspection fee specified above."

**SECTION 42.1.(c)** G.S. 106-277.28(3) reads as rewritten:

"(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of ~~two cents (2¢)~~ four cents (4¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown."

**SECTION 42.1.(d)** The Board of Agriculture shall charge no more than the following fees for agronomic services:

<u>Test/Service</u>	<u>Fee</u>
(1) Routine nematode samples	\$ 3.00
(2) Routine waste samples	\$ 5.00
(3) Research soil and nematode samples	\$12.00
(4) Research plant, waste, and solution samples	\$12.00
(5) Nonresident nematode samples	\$14.00
(6) Nonresident plant, waste, and solution samples	\$26.00

- (7) Special services for plant, waste, and solution samples:
  - a. Heavy metals-soils \$25.00
  - b. Nitrates-soils \$ 5.00
  - c. Waste-heavy metals \$10.00
  - d. Waste-N breakout \$10.00
  - e. Waste-liming equivalent \$10.00
  - f. Plant-chloride \$ 5.00
  - g. Plant-molybdenum \$ 5.00
  - h. Plant-petiole nitrates \$ 5.00.

**SECTION 42.1.(e)** The Board of Agriculture shall charge the following fees for animal disease diagnostic tests and services:

<u>Test/Service</u>	<u>Fee</u>
(1) Histopath	\$30.00
(2) Professional services-EIA	\$ 6.00
(3) Professional services-blood pour-off fees	\$ 1.00
(4) Vacuum tube handling fee	\$ 0.04

**SECTION 42.1.(f)** G.S. 81A-52 reads as rewritten:

**"§ 81A-52. License.**

All public weighmasters shall be licensed. Any person not less than 18 years of age who wishes to be a public weighmaster shall apply to the Department on a form provided by the Department. The Board may adopt rules for determining the qualifications of the applicant for a license. Public weighmasters shall be licensed for a period of one year beginning the first day of July and ending on the thirtieth day of June, and a fee of ~~twelve dollars (\$12.00)~~nineteen dollars (\$19.00) shall be paid for each person licensed at the time of the filing of the application."

**SECTION 42.1.(g)** G.S. 81A-72 reads as rewritten:

**"§ 81A-72. Registration; certificate of registration; annual renewal.**

The Commissioner or his authorized agent shall register any person who has complied with the requirements of this Article by making a record of receipt of application, and the issuing of a certificate or card of registration to applicant, whereupon the applicant becomes a registered scale technician and shall be known thereafter as such. Such registration shall be in effect from date of registration until July 1 next and shall be renewed on the first day of July of each year thereafter. A fee of twenty dollars (\$20.00) shall accompany each application for registration and each annual registration renewal."

**SECTION 42.1.(h)** G.S. 81A-11 is repealed.

**SECTION 42.1.(i)** Chapter 81A of the General Statutes is amended by adding the following new section to read:

**"§ 81A-12. Fee schedule.**

(a) The following fees apply to all weights that are tested and certified to meet tolerances less stringent than the American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the

normal fee. No extra fee shall be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

<u>Customary</u>	<u>Fee/Unit</u>	<u>Metric</u>	<u>Fee/Unit</u>
<u>0-10 lb</u>	<u>\$ 5.00</u>	<u>0-5 kg</u>	<u>\$ 5.00</u>
<u>11-100 lb</u>	<u>\$ 10.00</u>	<u>6-50 kg</u>	<u>\$ 10.00</u>
<u>101-1000 lb</u>	<u>\$ 20.00</u>	<u>51-500 kg</u>	<u>\$ 20.00</u>
<u>1001-2500 lb</u>	<u>\$ 30.00</u>	<u>501-1000 kg</u>	<u>\$ 30.00</u>
<u>2501-6000 lb</u>	<u>\$ 50.00</u>	<u>1001-2500 kg</u>	<u>\$ 50.00</u>
<u>Weight Carts</u>	<u>\$ 125.00</u>		
<u>up to 6000 lb</u>	<u>(includes adjustment)</u>		

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or the International Organization of Legal Metrology (IOLM) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

<u>Customary</u>	<u>Fee/Unit</u>	<u>Metric</u>	<u>Fee/Unit</u>
<u>0-10 lb</u>	<u>\$ 10.00</u>	<u>0-5 kg</u>	<u>\$ 10.00</u>
<u>11-100 lb</u>	<u>\$ 20.00</u>	<u>6-50 kg</u>	<u>\$ 20.00</u>
<u>101-1000 lb</u>	<u>\$ 40.00</u>	<u>51-500 kg</u>	<u>\$ 40.00</u>
<u>1001-2500 lb</u>	<u>\$ 60.00</u>	<u>501-1000 kg</u>	<u>\$ 60.00</u>
<u>2501-6000 lb</u>	<u>\$ 100.00</u>	<u>1001-2500 kg</u>	<u>\$ 100.00</u>

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or IOLM Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

<u>Customary</u>	<u>Fee/Unit</u>	<u>Metric</u>	<u>Fee/Unit</u>
<u>0-20 lb</u>	<u>\$ 20.00</u>	<u>0-10 kg</u>	<u>\$ 20.00</u>
<u>21-50 lb</u>	<u>\$ 40.00</u>	<u>11-30 kg</u>	<u>\$ 40.00</u>
<u>51-1000 lb</u>	<u>\$ 70.00</u>	<u>31-500 kg</u>	<u>\$ 70.00</u>
<u>1001-2500 lb</u>	<u>\$ 130.00</u>	<u>501-1000 kg</u>	<u>\$ 130.00</u>
<u>2501-6000 lb</u>	<u>\$ 200.00</u>	<u>1001-2500 kg</u>	<u>\$ 200.00</u>

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups (typically either a 1, 2, 3, 5 series or a 1, 2, 2, 5 series) and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory shall be assigned to the mass values of the weights. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 0, 1, 2, or 3 tolerances or IOLM Class E1, E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Adjustments

to weights of this group shall require a minimum of 10 days for weights to return to environmental equilibrium before a final calibration value can be assigned.

<u>Weight Range</u>	<u>Fee/Unit or Series</u>
<u>0-1 kg</u>	<u>\$30.00 each, with a minimum charge of \$90.00 (3 weights) per series</u>
<u>2-30 kg</u>	<u>\$50.00 each, with a minimum charge of \$150.00 (3 weights) per series</u>
<u>0-2 lb</u>	<u>\$30.00 each, with a minimum charge of \$90.00 (3 weights) per series</u>
<u>3-50 lb</u>	<u>\$50.00 each, with a minimum charge of \$150.00 (3 weights) per series</u>

(e) The following fees apply to volumetric standard calibration.

Provers or Test Measures Tested By the Volume Transfer Method

<u>Customary</u>	<u>Fee/Test Point</u>	<u>Metric</u>	<u>Fee/Test Point</u>
<u>0-5 gal</u>	<u>\$30.00</u>	<u>0-20 liters</u>	<u>\$30.00</u>
<u>Over 5 gal</u>	<u>Add \$0.40 per each additional gallon</u>	<u>Over 20 liters</u>	<u>Add \$0.10 per each additional liter</u>

Volumetric Flasks, Graduates, Provers, Slicker Plate Standards, or Test Measures

Tested By the Gravimetric Calibration Method

<u>Customary</u>	<u>Fee/Test Point</u>	<u>Metric</u>	<u>Fee/Test Point</u>
<u>0-100 gal set-up fee</u>	<u>\$50.00</u>	<u>0-500 liters set-up fee</u>	<u>\$50.00</u>
<u>Calibration Fee</u>	<u>Add \$2.00 per gallon</u>	<u>Calibration Fee</u>	<u>Add \$0.50 per liter</u>

Small Volume Provers (SVPs) Tested By the Gravimetric Calibration Method

<u>Customary</u>	<u>Fee/Test Point</u>	<u>Metric</u>	<u>Fee/Test Point</u>
<u>0-100 gal set-up fee</u>	<u>\$100.00</u>	<u>0-500 liters set-up fee</u>	<u>\$100.00</u>
<u>Calibration Fee</u>	<u>Add \$2.00 per gallon</u>	<u>Calibration Fee</u>	<u>Add \$0.50 per liter</u>

(f) The following fees apply to tape measures and rigid rules.

<u>Set-Up Fee</u>	<u>\$40.00 per instrument</u>
<u>Calibration Fee</u>	<u>\$10.00 per calibration interval</u>

(g) The following fees apply to liquid-in-glass and electronic thermometers.

<u>Set-Up Fee</u>	<u>\$40.00 per instrument</u>
<u>Calibration Fee</u>	<u>\$20.00 per calibration point</u>

Resistance Thermometry Coefficient

<u>Calculation and Report</u>	<u>\$100.00 per instrument</u>
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(h) Any special tests or weight cleaning shall be billed at the rate of seventy dollars (\$70.00) per hour prorated to the nearest tenth of an hour, with a minimum charge of thirty-five dollars (\$35.00).

(i) A minimum charge of twenty-five dollars (\$25.00) per invoice shall apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

**SECTION 42.1.(j)** This section becomes effective September 1, 2005.

#### **ESTABLISH FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS**

**SECTION 42.2.(a)** G.S. 74-24.16 is amended by adding the following new subsection to read:

"(d) The Commissioner may establish fees not to exceed fifty dollars (\$50.00) for each person participating in education and training programs provided by the Department of Labor to increase the number and competence of personnel engaged in the field of occupational safety and health."

**SECTION 42.2.(b)** This section becomes effective September 1, 2005.

### **PART XLIII. JUSTICE AND PUBLIC SAFETY FEES**

#### **GENERAL COURT OF JUSTICE FEE INCREASES**

**SECTION 43.1.(a)** G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~seventy-six dollars (\$76.00)~~ eighty-five dollars and fifty cents (\$85.50) in the district court, including cases before a magistrate, and the sum of ~~eighty-three dollars (\$83.00)~~ ninety-two dollars and fifty cents (\$92.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

**SECTION 43.1.(b)** G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

...

- (2) For support of the General Court of Justice, the sum of ~~sixty-nine dollars (\$69.00)~~ seventy-nine dollars (\$79.00) in the superior court, and the sum of ~~fifty-four dollars (\$54.00)~~ sixty-four dollars (\$64.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~forty-three dollars (\$43.00)~~ fifty-three dollars (\$53.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

**SECTION 43.1.(c)** G.S. 7A-306(a)(2) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

- ...
- (2) For support of the General Court of Justice the sum of ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each ~~thirty dollar (\$30.00)~~ forty-dollar (\$40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

**SECTION 43.1.(d)** G.S. 7A-307(a)(2) and (2a) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

- ...
- (2) For support of the General Court of Justice, the sum of ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed ~~three thousand dollars (\$3,000)~~ six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the

value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents (\$1.05) of each ~~thirty-dollar (\$30.00)~~ forty-dollar (\$40.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

- (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate, not to exceed ~~three thousand dollars (\$3,000)~~, six thousand dollars (\$6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual and final account."

**SECTION 43.1.(e)** G.S. 15A-145(e) reads as rewritten:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of ~~sixty five dollars (\$65.00)~~ one hundred twenty-five dollars (\$125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

**SECTION 43.1.(f)** G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

- ...
- (3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition ~~electronically~~.electronically and to pay a fee for the device as specified in subsection (c2) of this section."

**SECTION 43.1.(g)** G.S. 20-135.2A(e) reads as rewritten:



"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars (\$25.00) plus court costs in the sum of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00). Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

**SECTION 43.1.(h)** Subsection (a) of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of this section becomes effective September 1, 2005, and applies to all costs assessed or collected on or after that date.

#### **DEVICE FEE FOR HOUSE ARREST WITH ELECTRONIC MONITORING**

**SECTION 43.2.(a)** G.S. 15A-1343 is amended by adding a new subsection to read:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section shall pay a fee of ninety dollars (\$90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic monitoring. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

**SECTION 43.2.(b)** This section becomes effective September 1, 2005.

#### **INCREASE BUTNER TAXES**

**SECTION 43.3.(a)** Section 1 of Chapter 830 of the 1983 Session Laws reads as rewritten:

"Section 1. (a) The territorial jurisdiction of the Butner Police and Fire Protection District shall include: (i) any property formerly a part of the original Camp Butner reservation, including both those areas currently owned and occupied by the State and its agencies and those which may have been leased or otherwise disposed of by the State; (ii) the Lyons Station Sanitary District; and (iii) that part of Granville County adjoining the Butner reservation and the Lyons Station Sanitary District situated north

and west of the intersection of Rural Paved Roads 1103 and 1106 and bounded by those roads and the boundaries of said reservation and said sanitary district.

(b) The territorial jurisdiction set forth in subsection (a) of this section shall constitute the Butner Fire and Police Protection District. The tax collectors of Durham and Granville Counties shall annually collect ~~beginning with fiscal year 1983-84~~ a tax of ~~twenty cents (20¢)~~ twenty-five cents (25¢) per one hundred dollars (\$100.00) valuation of all real and personal property in the portions of said district in their respective counties from year to year which tax shall be collected as county taxes are collected and shall remit the same to the State Treasurer for deposit in the General Fund."

**SECTION 43.3.(b)** This section is effective for taxes imposed for taxable years beginning on or after July 1, 2005.

### **FEE FOR POLICE INFORMATION NETWORK**

**SECTION 43.4.(a)** G.S. 114-10.1 reads as rewritten:

**"§ 114-10.1. Police Information Network.**

(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history.

(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars (\$2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

- (1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars (\$300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For every desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars (\$25.00) per device. For a mobile device, the additional monthly fee is six dollars (\$6.00) per device.
- (2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars (\$25.00) per device. For a mobile device, the fee is six dollars (\$6.00) per device."

**SECTION 43.4.(b)** G.S. 114-10.1(d), as enacted by this section, reads as rewritten:

"(d) The Attorney General may impose an initial set up fee of two thousand six hundred fifty dollars (\$2,650) for agencies to participate in the Police Information Network. This one-time fee shall be used to offset the cost of the router and data circuit needed to access the Network.

The Attorney General may also impose monthly fees on participating agencies. The monthly fees collected under this subsection shall be used to offset the cost of operating and maintaining the Police Information Network

- (1) The Attorney General may impose a monthly circuit fee on agencies that access the Police Information Network through a circuit maintained and operated by the Department of Justice. The amount of the monthly fee is three hundred dollars (\$300.00) plus an additional fee amount for each device linked to the Network. The additional fee amount varies depending upon the type of device. For a desktop device after the first seven desktop devices, the additional monthly fee is twenty-five dollars (\$25.00) per device. For a mobile device, the additional monthly fee is ~~six dollars (\$6.00)~~ twelve dollars (\$12.00) per device.
- (2) The Attorney General may impose a monthly device fee on agencies that access the Police Information Network through some other approved means. The amount of the monthly device fee varies depending upon the type of device. For a desktop device, the monthly fee is twenty-five dollars (\$25.00) per device. For a mobile device, the fee is ~~six dollars (\$6.00)~~ twelve dollars (\$12.00) per device."

**SECTION 43.4.(c)** Subsection (b) of this section becomes effective January 1, 2006. The remainder of this section is effective when it becomes law.

**PART XLIV. DEPARTMENT OF TRANSPORTATION FEE CHANGES**

**DOT FEE INCREASES**

**SECTION 44.1.(a)** G.S. 20-7 reads as rewritten:

**"§ 20-7. Issuance and renewal of drivers licenses.**

...

(i) Fees. – The fee for a regular drivers license is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

Class of Regular License	Fee For Each Year
Class A	<del>\$4.30</del> <u>\$4.00</u>
Class B	<del>4.30</del> <u>4.00</u>
Class C	<del>3.05</del> <u>4.00</u>

The fee for a motorcycle endorsement is one dollar and seventy-five cents (\$1.75) for each year of the period for which the endorsement is issued. The appropriate fee shall be paid before a person receives a regular drivers license or an endorsement.

(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of ~~twenty-five dollars (\$25.00).~~ fifty dollars (\$50.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars (\$10,000,000), and shall pay a restoration fee of ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar (\$25.00) fee, and the first twenty-five dollars (\$25.00) of the fifty dollar (\$50.00) fee, fifty-dollar (\$50.00) fee, and the first fifty dollars (\$50.00) of the seventy-five-dollar (\$75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the fifty dollar (\$50.00) fee the seventy-five-dollar (\$75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars (\$10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars (\$10,000,000).

...

(l) Learner's Permit. – A person who is at least 18 years old may obtain a learner's permit. A learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle while in possession of the permit. A learner's permit is valid for a period of 18 months after it is issued. The fee for a learner's permit is ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00). A learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permit holder must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the motor vehicle being driven and is seated beside the permit holder."

**SECTION 44.1.(b)** G.S. 20-11(j) reads as rewritten:

"(j) Duration and Fee. – A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A limited learner's permit or limited provisional license issued under this section that expires on a weekend or State holiday shall remain valid through the fifth regular State business day following the date of expiration. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00). The fee for a full provisional license is the amount set under G.S. 20-7(i)."

**SECTION 44.1.(c)** G.S. 20-14 reads as rewritten:

**"§ 20-14. Duplicate licenses.**

A person may obtain a duplicate of a license issued by the Division by paying a fee of ~~ten dollars and five cents (\$10.05)~~ (\$10.00) and giving the Division satisfactory proof that any of the following has occurred:

- (1) The person's license has been lost or destroyed.
- (2) It is necessary to change the name or address on the license.
- (3) Because of age, the person is entitled to a license with a different color photographic background or a different color border.
- (4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

**SECTION 44.1.(d)** G.S. 20-16(e) reads as rewritten:

"(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00)."

**SECTION 44.1.(e)** G.S. 20-26(c) reads as rewritten:

"(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section in accordance with G.S. 20-43.1 to other persons for uses other than official upon prepayment of the following fees:

- (1) Limited extract copy of license record, for period up to three years ..... ~~\$5.00~~ \$8.00
- (2) Complete extract copy of license record ..... ~~5.00~~ 8.00
- (3) Certified true copy of complete license record ..... ~~7.00~~ 11.00.

All fees received by the Division under this subsection shall be credited to the Highway Fund."

**SECTION 44.1.(f)** G.S. 20-37.15(a1) reads as rewritten:

"(a1) The application must be accompanied by a nonrefundable application fee of ~~twenty dollars (\$20.00)~~ thirty dollars (\$30.00). This fee does not apply in any of the following circumstances:

- (1) When an individual surrenders a commercial driver learner's permit issued by the Division when submitting the application.
- (2) When the application is to renew a commercial drivers license issued by the Division.

This fee shall entitle the applicant to three attempts to pass the written knowledge test without payment of a new fee. No application fee shall be charged to an applicant eligible for a waiver under G.S. 20-37.13(c)."

**SECTION 44.1.(g)** G.S. 20-37.16(d) reads as rewritten:

"(d) The fee for a Class A, B, or C commercial drivers license is ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00) for each year of the period for which the license is issued. The fee for each endorsement is ~~one dollar and twenty five cents (\$1.25)~~ three dollars (\$3.00) for each year of the period for which the endorsement is issued. The fees required under this section do not apply to employees of the Driver License Section of the Division who are designated by the Commissioner."

**SECTION 44.1.(h)** G.S. 20-42(b) reads as rewritten:

"(b) The Commissioner and officers of the Division designated by the Commissioner may prepare under the seal of the Division and deliver upon request a certified copy of any document of the Division for a fee. The fee for a document, other than an accident report under G.S. 20-166.1, is ~~five dollars (\$5.00)~~ ten dollars (\$10.00). The fee for an accident report is ~~four dollars (\$4.00)~~ five dollars (\$5.00). A certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. The certification fee does not apply to a document furnished for official use to a judicial official or to an official of the federal government, a state government, or a local government."

**SECTION 44.1.(i)** G.S. 20-50(b) reads as rewritten:

"(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ~~three dollars (\$3.00)~~ five dollars (\$5.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

- (1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
- (2) It expires on midnight of the day set for expiration.
- (3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
- (4) If it is lost or stolen, the person who applied for it must notify the Division.
- (5) It may not be issued by a dealer.
- (6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible."

**SECTION 44.1.(j)** G.S. 20-73(c) reads as rewritten:

"(c) Penalties. – A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00). When a person to whom a vehicle is transferred fails to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund."

**SECTION 44.1.(k)** G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

- (1) Each application for certificate of title ..... ~~\$35.00~~ \$39.00
- (2) Each application for duplicate or corrected certificate of title ..... ~~10.00~~ 14.00
- (3) Each application of reposessor for certificate of title ..... ~~10.00~~ 14.00
- (4) Each transfer of registration ..... ~~10.00~~ 15.00
- (5) Each set of replacement registration plates ..... ~~10.00~~ 15.00
- (6) Each application for duplicate registration card..... ~~10.00~~ 15.00
- (7) Each application for recording supplementary lien..... ~~10.00~~ 14.00
- (8) Each application for removing a lien from a certificate of title ..... ~~10.00~~ 14.00

- (9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale..... ~~10.00~~14.00
- (10) Each application for a salvage certificate of title made by an insurer ..... ~~10.00~~15.00
- (11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 .....25.00."

**SECTION 44.1.(l)** G.S. 20-85.1 reads as rewritten:

**"§ 20-85.1. Registration by mail; one-day title service; fees.**

(a) The owner of a vehicle registered in North Carolina may renew that vehicle registration by mail. A postage and handling fee of one dollar (\$1.00) per vehicle to be registered shall be charged for this service.

(b) The Commissioner and the employees of the Division designated by the Commissioner may prepare and deliver upon request a certificate of title, charging a fee of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) for one-day title service, in lieu of the title fee required by G.S. 20-85(a). The fee for one-day title service must be paid by cash or by certified check.

(c) The fee collected under subsection (a) shall be credited to the Highway Fund. The fee collected under subsection (b) shall be credited to the Highway Trust Fund."

**SECTION 44.1.(m)** G.S. 20-87 reads as rewritten:

**"§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

- (1) For-Hire Passenger Vehicles. – The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars (\$78.00). The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents (\$1.40) per hundred pounds of empty weight of the vehicle.
- (2) U-Drive-It Vehicles. – U-drive-it vehicles shall pay the following tax:
 

Motorcycles:	1-passenger capacity .....	\$18.00
	2-passenger capacity .....	22.00
	3-passenger capacity .....	26.00
Automobiles:	15 or fewer passengers	<del>\$41.00</del> <u>\$51.00</u>
Buses:	16 or more passengers .....	<del>\$1.40</del> <u>\$2.00</u> per
		hundred
		pounds of
		empty weight
Trucks under		
7,000 pounds		
that do not		
haul products		
for hire:	4,000 pounds.....	\$41.50



5,000 pounds..... \$51.00  
 6,000 pounds..... \$61.00.

- (3) Repealed by Session Laws 1981, c. 976, s. 3.
- (4) Limousine Vehicles. – For-hire passenger vehicles on call or demand which do not solicit passengers indiscriminately for hire between points along streets or highways, shall be taxed at the same rate as for-hire passenger vehicles under G.S. 20-87(1) but shall be issued appropriate registration plates to distinguish such vehicles from taxicabs.
- (5) Private Passenger Vehicles. – There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:  
 Private passenger vehicles of not more than fifteen passengers ..... ~~\$20.00~~ \$28.00  
 Private passenger vehicles over fifteen passengers ..... ~~23.00~~ 31.00  
 Provided, that a fee of only one dollar (\$1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.
- (6) Private Motorcycles. – The base fee on private passenger motorcycles shall be ~~nine dollars (\$9.00);~~ fifteen dollars (\$15.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be ~~sixteen dollars (\$16.00).~~ twenty-two dollars (\$22.00). An additional fee of three dollars (\$3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72.
- (7) Dealer License Plates. – The fee for a dealer license plate is the regular fee for each of the first five plates issued to the same dealer and is one-half the regular fee for each additional dealer license plate issued to the same dealer. The "regular fee" is the fee set in subdivision (5) of this section for a private passenger motor vehicle of not more than 15 passengers.
- (8) Driveaway Companies. – Any person engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay a fee of one-half of the amount that would otherwise be payable under this section for each set of plates.
- (9) House Trailers. – In lieu of other registration and license fees levied on house trailers under this section or G.S. 20-88, the registration and

license fee on house trailers shall be ~~seven dollars (\$7.00)~~ eleven dollars (\$11.00) for the license year or any portion thereof.

- (10) Special Mobile Equipment. – The fee for special mobile equipment for the license year or any part of the license year is two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers.
- (11) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars (\$3.00) to arrive at the total fee.
- (12) Low-Speed Vehicles. – The fee for a low-speed vehicle is the same as the fee for private passenger vehicles of not more than 15 passengers."

**SECTION 44.1.(n)** G.S. 20-88 reads as rewritten:

**"§ 20-88. Property-hauling vehicles.**

(a) Determination of Weight. – For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of 1,000 pounds or major fraction thereof, weights of over 500 pounds counted as 1,000 and weights of 500 pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for 6,000 pounds or less gross weight and the gross weight of such combination does not exceed 9,000 pounds, except wreckers as defined under G.S. 20-4.01(50). Those property-hauling vehicles registered for 4,000 pounds shall be permitted a tolerance of 500 pounds above the weight permitted under the table of weights and rates appearing in subsection (b) of this section.

(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

**SCHEDULE OF WEIGHTS AND RATES**

---

Rates Per Hundred Pound Gross Weight	
	Farmer Rate
Not over 4,000 pounds	<del>\$0.23</del> <u>\$0.29</u>
4,001 to 9,000 pounds inclusive	<del>.29</del> <u>.40</u>
9,001 to 13,000 pounds inclusive	<del>.37</del> <u>.50</u>
13,001 to 17,000 pounds inclusive	<del>.51</del> <u>.68</u>
Over 17,000 pounds	<del>.58</del> <u>.77</u>

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Rates Per Hundred Pound Gross Weight

	General Rate
Not over 4,000 pounds	<del>\$0.46</del> <u>\$0.59</u>
4,001 to 9,000 pounds inclusive	<del>.63</del> <u>.81</u>
9,001 to 13,000 pounds inclusive	<del>.78</del> <u>1.00</u>
13,001 to 17,000 pounds inclusive	<del>1.06</del> <u>1.36</u>
Over 17,000 pounds	<del>1.20</del> <u>1.54</u>

- 
- (1) The minimum fee for a vehicle licensed under this subsection is ~~seventeen dollars and fifty cents (\$17.50)~~ twenty-four dollars (\$24.00) at the farmer rate and ~~twenty one dollars and fifty cents (\$21.50)~~ twenty-eight dollars (\$28.00) at the general rate.
  - (2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.
  - (3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
  - (4) "Farm products" means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.
  - (5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.
  - (5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.
  - (6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars (\$75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars (\$148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) The fee for a semitrailer or trailer is ~~ten dollars (\$10.00)~~ nineteen dollars (\$19.00) for each year or part of a year. The fee is payable on or before January 1 of each year. Upon the application of the owner of a semitrailer or trailer, the Division may issue a multiyear plate and registration card for the semitrailer or trailer for a fee of seventy-five dollars (\$75.00). A multiyear plate and registration card for a semitrailer or

trailer are valid until the owner transfers the semitrailer or trailer to another person or surrenders the plate and registration card to the Division. A multiyear plate may not be transferred to another vehicle.

The Division shall issue a multiyear semitrailer or trailer plate in a different color than an annual semitrailer or trailer plate and shall include the word "multiyear" on the plate. The Division may not issue a multiyear plate for a house trailer.

(d) Rates on trucks, trailers and semitrailers wholly or partially equipped with solid tires shall be double the above schedule.

(e) Repealed by Session Laws 1981, c. 976, s. 6.

(f) Repealed by Session Laws 1995, c. 163, s. 6.

(g) Repealed by Session Laws 1969, c. 600, s. 17.

(h) Repealed by Session Laws 1979, c. 419.

(i) Any vehicle fee determined under this section according to the weight of the vehicle shall be increased by the sum of three dollars (\$3.00) to arrive at the total fee.

(j) No heavy vehicle subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954 (26 U.S.C. 4481) may be registered or licensed pursuant to G.S. 20-88 without proof of payment of the use tax imposed by that law. The proof of payment shall be on a form prescribed by the United States Secretary of Treasury pursuant to the provisions of 23 U.S.C. 141(d).

(k) A person may not drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight. A vehicle driven in violation of this subsection is subject to the axle-group weight penalties set in G.S. 20-118(e). The penalties apply to the amount by which the vehicle's gross weight exceeds its declared weight.

(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word "permanent" on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

**SECTION 44.1.(o)** G.S. 20-289 reads as rewritten:

**"§ 20-289. License fees.**

(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, distributor branches, and wholesalers, ~~fifty dollars (\$50.00)~~ seventy dollars (\$70.00) for each place of business.

(2) For manufacturers, ~~one hundred dollars (\$100.00)~~, one hundred fifty dollars (\$150.00) and for each factory branch in this State, ~~seventy dollars (\$70.00)~~, one hundred dollars (\$100.00).

(3) For motor vehicle sales representatives, ~~ten dollars (\$10.00)~~, fifteen dollars (\$15.00).

(4) For factory representatives, or distributor representatives, ~~ten dollars (\$10.00)~~, fifteen dollars (\$15.00).

(5) Repealed by Session Laws 1991, c. 662, s. 4.

(b) The fees collected under this section shall be credited to the Highway Fund. These fees are in addition to all other taxes and fees."

**SECTION 44.1.(p)** G.S. 20-385 reads as rewritten:

**"§ 20-385. Fee schedule.**

(a) Amounts. –

- |   |                               |
|---|-------------------------------|
| (1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State            | \$ 1.00                       |
| (2) Application by an intrastate motor carrier for a certificate of exemption   | <del>25.00</del> <u>45.00</u> |
| (3) Certification by an interstate motor carrier that it is not regulated by the United States Department of Transportation | <del>25.00</del> <u>45.00</u> |
| (4) Application by an interstate motor carrier for an emergency permit  | <del>10.00</del> <u>18.00</u> |

(b) Reciprocal Agreements. – The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

**SECTION 44.1.(q)** Section 5(c) of S.L. 2004-189 reads as rewritten:

**"SECTION 5.(c)** The Division of Motor Vehicles shall retain a portion of ~~the proceeds~~ five cents (\$0.05) collected for the issuance of each of the increase in drivers license and duplicate license ~~fees enacted in this Section~~ to offset the actual cost of developing and maintaining the online Organ Donor Internet site established pursuant to Section 1 of this act. ~~Proceeds remaining after deduction of amounts for development and maintenance costs~~ The remainder of the five cents (\$0.05) shall be credited to the License to Give Trust Fund established under G.S. 20-7.4 and shall be used for the purposes authorized under G.S. 20-7.4 and G.S. 20-7.5."

**SECTION 44.1.(r)** G.S. 20-291, as amended by S.L. 2005-99, reads as rewritten:

**"§ 20-291. Representatives to carry license and display it on request; license to name employer.**

Every person to whom a sales representative, factory representative, or distributor representative license is issued shall carry the license when engaged in business, and shall display it upon request. The license shall state the name of the representative's employer. If the representative changes employers, the representative shall immediately apply to the Division for a license that states the name of the representative's new employer. The fee for issuing a license stating the name of a new employer is ~~one-half the fee set in G.S. 20-289 for an annual license.~~ ten dollars (\$10.00)."

**SECTION 44.1.(s)** This section becomes effective October 1, 2005, and applies to fees collected on or after that date.

## **PART XLV. INDUSTRIAL COMMISSION FEES**

### **INDUSTRIAL COMMISSION FEES**

**SECTION 45.1.(a)** G.S. 97-73 reads as rewritten:

**"§ 97-73. ~~Expenses of making examinations.~~ Fees.**

(a) The Industrial Commission ~~shall~~ may establish by rule a schedule of fees for examinations ~~conducted and conducted~~, reports ~~made pursuant to G.S. 97-61.1 through 97-61.6 and 97-67 through 97-71.~~ made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003."

**SECTION 45.1.(b)** This section is effective when it becomes law.

## **PART XLVI. MISCELLANEOUS PROVISIONS**

### **EXECUTIVE BUDGET ACT APPLIES**

**SECTION 46.1.** The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

### **COMMITTEE REPORT**

**SECTION 46.2.(a)** The Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, which was distributed in the House of Representatives and the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

**SECTION 46.2.(b)** The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2005-2007 fiscal biennium is a line-item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The Director of the Budget submitted the itemized budget requests to the General Assembly on February 23, 2005, in the documents "North Carolina State Budget 2005-2007, Summary of Recommendations" and "State of North Carolina 2005-2007 Recommended Continuation Budget" volumes one through six. The beginning appropriation for the 2005-2006 fiscal year and the 2006-2007 fiscal year for the various departments, institutions, and other spending agencies of the State is

referenced in Tables 12 and 13 of the Summary of Recommendations document as the recommended continuation budget.

The General Assembly adjusted the recommended continuation budget to incorporate all nonrecurring adjustments enacted by the 2003 General Assembly as required in S.L. 2004-124 and S.L. 2003-284. These adjustments affect the Division of Medical Assistance, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Clean Water Management Trust Fund, the Department of Crime Control and Public Safety, the Judicial Department, the General Assembly, the Department of Revenue, the Office of State Budget and Management, the Community Colleges System Office, The University of North Carolina – Board of Governors, the Department of Transportation, the Reserve for Death Benefit Trust, and the Reserve for Disability Income Plan. These adjustments to the recommended continuation budget are set out in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005. The recommended continuation budget submitted by the Director of the Budget, as adjusted by the General Assembly, is referred to as the adjusted continuation budget and represents the starting point for further legislative revisions.

The General Assembly revised the adjusted continuation budget for the 2005-2006 fiscal year and the 2006-2007 fiscal year in accordance with the steps that follow, and the line-item detail in the budget enacted by the General Assembly may be derived accordingly:

- (1) The adjusted continuation budget was revised in accordance with reductions and additions that were set out in the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, together with any accompanying correction sheets.
- (2) Transfers of funds supporting programs were made in accordance with the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated August 8, 2005, together with any accompanying correction sheets.

**SECTION 46.2.(c)** The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

## **MOST TEXT APPLIES ONLY TO THE 2005-2007 FISCAL BIENNIUM**

**SECTION 46.3.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium.

## **EFFECT OF HEADINGS**

**SECTION 46.4.** The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part.

**SEVERABILITY CLAUSE**

**SECTION 46.5.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**EFFECTIVE DATE**

**SECTION 46.6.** Except as otherwise provided, this act becomes effective July 1, 2005.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of August, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 10:10 a.m. this 13<sup>th</sup> day of August, 2005