

STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

2005 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 2006

BEGINNING ON

**WEDNESDAY, THE NINTH DAY OF
MAY, A.D. 2006**

HELD IN THE CITY OF RALEIGH

**ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL**

PUBLISHED BY AUTHORITY

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STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE
2005 GENERAL ASSEMBLY

BEVERLY E. PERDUE (D).....President of the Senate..... Craven
JAMES B. BLACK (D) Speaker of the House Mecklenburg

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

MICHAEL F. EASLEY (D) Governor Brunswick
BEVERLY E. PERDUE (D).....Lieutenant Governor Craven
ELAINE F. MARSHALL (D).....Secretary of State Harnett
LES W. MERRITT (R). Auditor Wake
RICHARD H. MOORE (D) Treasurer Vance
JUNE S. ATKINSON (D) Superintendent of Public Instruction Wake
ROY A. COOPER, III (D) Attorney General..... Wake
STEVEN W. TROXLER. (R) Commissioner of Agriculture Guilford
CHERIE K. BERRY (R).....Commissioner of Labor Catawba
JAMES E. LONG (D) Commissioner of Insurance Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is designated Democrat by the abbreviation "D" and designated Republican by the abbreviation "R".

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Easley are carried in this volume.

SENATE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
BEVERLY E. PERDUE	President	New Bern, Craven County
MARC BASNIGHT	President Pro Tempore	Manteo, Dare County
CHARLIE S. DANNELLY	Deputy President Pro Tempore ...	Charlotte, Mecklenburg County
JANET B. PRUITT	Principal Clerk	Raleigh, Wake County
TED HARRISON	Reading Clerk	Cary, Wake County
CECIL GOINS	Sergeant-at-Arms	Raleigh, Wake County

SENATORS

District	Name	Party	County	Address
1	MARC BASNIGHT	D	Dare	Manteo
2	* C.W. "PETE" BLAND	D	Craven	Vanceboro
3	S. CLARK JENKINS	D	Edgecombe	Tarboro
4	ROBERT L. HOLLOMAN	D	Hertford	Ahoskie
5	JOHN H. KERR III	D	Wayne	Goldsboro
6	HARRY BROWN	R	Onslow	Jacksonville
7	DOUG BERGER	D	Franklin	Youngsville
8	R.C. SOLES, JR.	D	Columbus	Tabor City
9	JULIA BOSEMAN	D	New Hanover	Wilmington
10	CHARLES W. ALBERTSON	D	Duplin	Beulaville
11	A.B. SWINDELL IV	D	Nash	Nashville
12	FRED SMITH	R	Johnston	Clayton
13	DAVID F. WEINSTEIN	D	Robeson	Lumberton
14	VERNON MALONE	D	Wake	Raleigh
15	NEAL HUNT	R	Wake	Raleigh
16	JANET COWELL	D	Wake	Raleigh
17	RICHARD Y. STEVENS	R	Wake	Cary
18	ROBERT ATWATER	D	Chatham	Chapel Hill
19	TONY RAND	D	Cumberland	Fayetteville
20	JEANNE H. LUCAS	D	Durham	Durham
21	LARRY SHAW	D	Cumberland	Fayetteville
22	HARRIS BLAKE	R	Moore	Pinehurst
23	ELEANOR KINNAIRD	D	Orange	Carrboro
24	HUGH WEBSTER	R	Alamance	Burlington
25	WILLIAM R. PURCELL	D	Scotland	Laurinburg
26	PHILIP E. BERGER	R	Rockingham	Eden
27	KAY R. HAGAN	D	Guilford	Greensboro
28	KATIE G. DORSETT	D	Guilford	Greensboro
29	JERRY W. TILLMAN	R	Randolph	Archdale
30	DON EAST	R	Surry	Pilot Mountain
31	** WILLIAM B. MILLER, SR.	R	Forsyth	Winston-Salem
	*** PETER S. BRUNSTETTER	R	Forsyth	Lewisville
32	LINDA GARROU	D	Forsyth	Winston-Salem
33	STAN BINGHAM	R	Davidson	Denton
34	ANDREW C. BROCK	R	Davie	Mocksville
35	W. EDWARD GOODALL, JR.	R	Union	Weddington
36	FLETCHER L. HARTSELL, JR.	R	Cabarrus	Concord
37	DANIEL G. CLODFELTER	D	Mecklenburg	Charlotte
38	CHARLIE S. DANNELLY	D	Mecklenburg	Charlotte
39	ROBERT PITTENGER	R	Mecklenburg	Charlotte
40	MALCOLM GRAHAM	D	Mecklenburg	Charlotte
41	JAMES FORRESTER	R	Gaston	Stanley
42	AUSTIN M. ALLRAN	R	Catawba	Hickory
43	DAVID W. HOYLE	D	Gaston	Dallas
44	JIM JACUMIN	R	Burke	Connelly Springs
45	JOHN A. GARWOOD	R	Wilkes	North Wilkesboro
46	WALTER H. DALTON	D	Rutherford	Rutherfordton
47	KEITH W. PRESNELL	R	Yancey	Burnsville
48	TOM APODACA	R	Henderson	Hendersonville
49	MARTIN L. NESBITT	D	Buncombe	Asheville
50	JOHN J. SNOW, JR.	D	Cherokee	Murphy

* Appointed February 1, 2006 to fill the unexpired term of Scott Thomas who resigned January 18, 2006.
** Appointed March 8, 2006 to fill the unexpired term of Hamilton Horton who died January 31, 2006.
*** Appointed May 30, 2006 to fill the unexpired term of William B. Miller who resigned May 29, 2006.

HOUSE OFFICERS		
<i>Name</i>	<i>Position</i>	<i>Address</i>
JAMES B. BLACK.....	Speaker	Matthews, Mecklenburg County
RICHARD T. MORGAN	Speaker Pro Tempore	Eagle Springs, Moore County
DENISE G. WEEKS.....	Principal Clerk	Raleigh, Wake County
ROBERT R. SAMUELS	Sergeant-at-Arms	Charlotte, Mecklenburg County

REPRESENTATIVES				
District	Name	Party	County	Address
1	WILLIAM C. OWENS, JR.	D.....	Pasquotank	Elizabeth City
2	* TIMOTHY L. SPEAR	D.....	Washington	Creswell
3	ALICE GRAHAM UNDERHILL	D.....	Craven	New Bern
4	RUSSELL E. TUCKER	D.....	Duplin.....	Pink Hill
5	HOWARD J. HUNTER, JR.	D.....	Hertford	Ahoskie
6	ARTHUR J. WILLIAMS.....	D.....	Beaufort.....	Washington
7	EDWARD JONES	D.....	Halifax.....	Enfield
8	EDITH D. WARREN.....	D.....	Pitt	Farmville
9	MARIAN N. McLAWHORN	D.....	Pitt	Grifton
10	STEPHEN A. LARoque	R.....	Lenoir	Kinston
11	LOUIS M. PATE, JR.	R.....	Wayne	Mt. Olive
12	WILLIAM L. WAINWRIGHT	D.....	Craven	Havelock
13	JEAN R. PRESTON	R.....	Carteret.....	Emerald Isle
14	GEORGE G. CLEVELAND	R.....	Onslow	Jacksonville
15	W. ROBERT GRADY.....	R.....	Onslow	Jacksonville
16	CAROLYN H. JUSTICE	R.....	Pender.....	Hampstead
17	BONNER L. STILLER	R.....	Brunswick	Oak Island
18	THOMAS E. WRIGHT.....	D.....	New Hanover	Wilmington
19	DANIEL F. McCOMAS	R.....	New Hanover	Wilmington
20	DEWEY L. HILL	D.....	Columbus	Whiteville
21	LARRY M. BELL	D.....	Sampson	Clinton
22	EDD NYE	D.....	Bladen	Elizabethtown
23	JOE P. TOLSON	D.....	Edgecombe.....	Pinetops
24	JEAN FARMER-BUTTERFIELD	D.....	Wilson	Wilson
25	WILLIAM G. DAUGHTRIDGE, JR.	R.....	Nash	Rocky Mount
26	N. LEO DAUGHTRY	R.....	Johnston	Smithfield
27	MICHAEL H. WRAY.....	D.....	Northampton	Gaston
28	JAMES H. LANGDON, JR.	R.....	Johnston	Angier
29	** PAUL MILLER.....	D.....	Durham.....	Durham
29	*** LARRY D. HALL	D.....	Durham.....	Durham
30	PAUL LUEBKE	D.....	Durham.....	Durham
31	HENRY M. MICHAUX, JR.	D.....	Durham.....	Durham
32	JAMES W. CRAWFORD, JR.	D.....	Granville.....	Oxford
33	BERNARD ALLEN	D.....	Wake	Raleigh
34	GRIER MARTIN, III.....	D.....	Wake	Raleigh
35	JENNIFER WEISS	D.....	Wake	Cary
36	J. NELSON DOLLAR	R.....	Wake	Cary
37	PAUL STAM	R.....	Wake	Apex
38	DEBORAH K. ROSS	D.....	Wake	Raleigh
39	LINDA COLEMAN.....	D.....	Wake	Knightdale
40	RICK L. EDDINS.....	R.....	Wake	Raleigh
41	J. RUSSELL CAPPS	R.....	Wake	Raleigh
42	MARVIN W. LUCAS	D.....	Cumberland	Spring Lake
43	MARY E. McALLISTER	D.....	Cumberland	Fayetteville
44	MARGARET H. DICKSON	D.....	Cumberland	Fayetteville
45	RICK GLAZIER.....	D.....	Cumberland	Fayetteville
46	DOUGLAS Y. YONGUE.....	D.....	Scotland.....	Laurinburg
47	RONNIE N. SUTTON	D.....	Robeson.....	Pembroke
48	GARLAND E. PIERCE	D.....	Scotland.....	Wagram
49	LUCY T. ALLEN.....	D.....	Franklin	Louisburg
50	BILL FAISON.....	D.....	Orange.....	Durham
51	JOHN I. SAULS	R.....	Lee	Sanford
52	RICHARD T. MORGAN	R.....	Moore	Eagle Springs
53	DAVID R. LEWIS.....	R.....	Harnett.....	Dunn
54	JOE HACKNEY	D.....	Orange	Chapel Hill
55	W.A. "WINKIE" WILKINS.....	D.....	Person.....	Roxboro
56	VERLA C. INSKO.....	D.....	Orange.....	Chapel Hill

57	M. PRICEY HARRISON	D.....	Guilford	Greensboro
58	ALMA S. ADAMS	D.....	Guilford	Greensboro
59	MAGGIE JEFFUS.....	D.....	Guilford	Greensboro
60	EARL JONES.....	D.....	Guilford	Greensboro
61	LAURA I. WILEY.....	R.....	Guilford	High Point
62	JOHN M. BLUST.....	R.....	Guilford	Greensboro
63	ALICE L. BORDSEN.....	D.....	Alamance	Mebane
64	CARY D. ALLRED	R.....	Alamance	Burlington
65	E. NELSON COLE	D.....	Rockingham	Reidsville
66	MELANIE WADE GOODWIN.....	D.....	Richmond	Hamlet
67	DAVID D. ALMOND, JR.....	R.....	Stanly	Stanfield
68	J. CURTIS BLACKWOOD, JR.	R.....	Union.....	Matthews
69	PRYOR A. GIBSON, III	D.....	Anson	Wadesboro
70	ARLIE F. CULP.....	R.....	Randolph	Ramseur
71	LARRY W. WOMBLE	D.....	Forsyth	Winston-Salem
72	EARLINE W. PARMON	D.....	Forsyth	Winston-Salem
73	LARRY R. BROWN	R.....	Forsyth	Kernersville
74	DALE R. FOLWELL	R.....	Forsyth	Winston-Salem
75	WILLIAM C. MCGEE	R.....	Forsyth	Clemmons
76	FRED F. STEEN, II.....	R.....	Rowan	Landis
77	LORENE T. COATES	D.....	Rowan	Salisbury
78	HAROLD J. BRUBAKER	R.....	Randolph	Asheboro
79	JULIA C. HOWARD.....	R.....	Davie	Mocksville
80	JERRY C. DOCKHAM.....	R.....	Davidson	Denton
81	L. HUGH HOLLIMAN.....	D.....	Davidson	Lexington
82	JEFFREY L. BARNHART.....	R.....	Cabarrus	Concord
83	LINDA P. JOHNSON	R.....	Cabarrus	Kannapolis
84	PHILLIP D. FRYE.....	R.....	Mitchell	Spruce Pine
85	MITCH GILLESPIE	R.....	McDowell.....	Marion
86	WALTER G. CHURCH, SR.....	D.....	Burke	Valdese
87	EDGAR V. STARNES	R.....	Caldwell	Granite Falls
88	MARK W. HOLLO	R.....	Alexander	Taylorsville
89	MITCHELL S. SETZER	R.....	Catawba.....	Catawba
90	JAMES A. HARRELL, III	D.....	Surry	Elkin
91	BRYAN R. HOLLOWAY	R.....	Stokes	King
92	GEORGE M. HOLMES.....	R.....	Yadkin	Hamptonville
93	W. EUGENE WILSON	R.....	Watauga	Boone
94	R. TRACY WALKER	R.....	Wilkes	Wilkesboro
95	KAREN B. RAY	R.....	Iredell	Mooreville
96	MARK K. HILTON.....	R.....	Catawba.....	Conover
97	JOE L. KISER	R.....	Lincoln	Vale
98	JOHN W. RHODES	R.....	Mecklenburg	Cornelius
99	DREW P. SAUNDERS	D.....	Mecklenburg	Huntersville
100	JAMES B. BLACK	D.....	Mecklenburg	Matthews
101	BEVERLY M. EARLE	D.....	Mecklenburg	Charlotte
102	BECKY CARNEY	D.....	Mecklenburg	Charlotte
103	JIM GULLEY	R.....	Mecklenburg	Matthews
104	W. EDWIN MCMAHAN	R.....	Mecklenburg	Charlotte
105	DOUGLAS S. VINSON.....	R.....	Mecklenburg	Charlotte
106	MARTHA B. ALEXANDER	D.....	Mecklenburg	Charlotte
107	W. PETE CUNNINGHAM.....	D.....	Mecklenburg	Charlotte
108	JOHN M. RAYFIELD	R.....	Gaston	Belmont
109	WILLIAM A. CURRENT, SR.	R.....	Gaston	Gastonia
110	DEBBIE A. CLARY	R.....	Cleveland	Cherryville
111	TIM MOORE.....	R.....	Cleveland	Shelby
112	BOBBY F. ENGLAND.....	D.....	Rutherford	Ellenboro
113	TRUDI WALEND	R.....	Transylvania.....	Brevard
114	SUSAN C. FISHER	D.....	Buncombe	Asheville
115	D. BRUCE GOFORTH.....	D.....	Buncombe	Asheville
116	WILMA M. SHERRILL	R.....	Buncombe	Asheville
117	CAROLYN K. JUSTUS	R.....	Henderson	Hendersonville
118	RAYMOND C. RAPP	D.....	Madison.....	Mars Hill
119	R. PHILLIP HAIRE	D.....	Jackson	Sylva
120	ROGER WEST	R.....	Cherokee	Marble

* Appointed January 27, 2006 to fill the unexpired term of William Culpepper who resigned January 3, 2006.

** Resigned July 7, 2006.

*** Appointed July 11, 2006 to fill the unexpired term of Paul Miller.

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT, *COCHAIR*

HOUSE SPEAKER JAMES B. BLACK, *COCHAIR*

SEN. THOMAS M. APODACA
SEN. LINDA D. GARROU
SEN. VERNON MALONE
SEN. ANTHONY E. RAND
SEN. LARRY SHAW
SEN. R.C. SOLES, JR.
SEN. JERRY W. TILLMAN

REP. BECKY CARNEY
REP. JULIA CRAVEN HOWARD
REP. RICHARD T. MORGAN
REP. WILLIAM C. OWENS, JR.
REP. WILMA M. SHERRILL
REP. WILLIAM L. WAINWRIGHT

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR..... Legislative Services Officer
GERRY F. COHEN Director of the Bill Drafting Division
LYNN R. MUCHMORE..... Director of the Fiscal Research Division
DENNIS W. MCCARTY Director of the Information Systems Division
TONY C. GOLDMAN Director of the Administrative Division
TERRENCE D. SULLIVAN Director of the Research Division

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 2006

S.B. 386

Session Law 2006-1

AN ACT ALLOWING CABARRUS COUNTY TO CHANGE THE BOUNDARIES
OF FIRE DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 558 of the 1987 Session Laws is amended by adding a new section to read:

"SECTION 19.1. The Board of Commissioners may, effective the first day of July after the adoption of an ordinance, change the boundaries of a fire district in Cabarrus County established by this act, if:

- (1) It first holds a public hearing on that ordinance, with notice published at least 14 days before the hearing.
- (2) Makes available in the office of the Clerk to the Board of Commissioners a map showing the proposed changes.
- (3) No area will be in more than one fire district.
- (4) No area shall be within the corporate limits of a municipality (except for any area within the corporate limits of a municipality that is already within a fire district under this act)."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of May, 2006.

Became law on the date it was ratified.

H.B. 1868

Session Law 2006-2

AN ACT TO PROVIDE EMERGENCY FUNDING FOR THE DEPARTMENT OF
CORRECTION.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Correction the sum of fifteen million dollars (\$15,000,000) for the 2005-2006 fiscal year for expenses related to unanticipated utility and health care costs. Funds that are unexpended and unencumbered as of the end of the 2005-2006 fiscal year shall revert to the General Fund.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of May, 2006.

Became law upon approval of the Governor at 2:00 p.m. on the 20th day of May, 2006.

H.B. 2358**Session Law 2006-3**

AN ACT TO ALLOW THE HAYWOOD COUNTY CONSOLIDATED SCHOOL SYSTEM BOARD OF EDUCATION TO PERMIT THE USE OF PUBLIC SCHOOL ACTIVITY BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE NORTH CAROLINA INTERNATIONAL FOLK FESTIVAL, INC., AND HAYWOOD COMMUNITY COLLEGE EVENTS TO BE HELD IN HAYWOOD COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58 or any other provision of law, the Haywood County Consolidated School System Board of Education may enter into a contract, under terms and conditions set by the Haywood County Consolidated School System Board of Education to permit public school activity buses to be used from June through August of each year for activities and events related to the North Carolina International Folk Festival, Inc., doing business as Folkmoot, USA, and Haywood Community College, doing business as "Mountain Echo: A Homecoming", to be held in Haywood County.

State funds shall not be used for the use and operation of activity buses under this act.

Neither the State of North Carolina nor the Haywood County Consolidated School System Board of Education shall incur any liability for any damages resulting from the use or operation of activity buses under this act. North Carolina shall require any entity entering into a contract with the Haywood County Consolidated School System Board of Education to carry sufficient liability insurance covering the use and operation of activity buses under this act.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of June, 2006.

Became law on the date it was ratified.

H.B. 1819**Session Law 2006-4**

AN ACT TO RESTRICT ANNEXATION OF ANY PART OF THE TERRITORY OF THE LYONS STATION SANITARY DISTRICT.

Whereas, the General Assembly in 1983 established a special tax district consisting of Camp Butner and the Lyons Station Sanitary District in order to provide fire and police protection to that area; and

Whereas, the General Assembly in 1987 restricted annexation of the Camp Butner reservation in order to avoid double taxation and to further the special structure of services in that area; and

Whereas, the General Assembly did not consider at that time the similar status of the Lyons Station Sanitary District, which is part of the same special tax district as the Camp Butner reservation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 830 of the 1983 Session Laws, as rewritten by Section 43.3 of S.L. 2005-276, 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 a tax of 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.

(c) As long as G.S. 122C-410 prevents annexation by any municipality of any territory within the Camp Butner reservation without written approval of the Secretary of Health and Human Services, no municipality may annex under Article 4A of Chapter 160A of the General Statutes any part of the Lyons Station Sanitary District."

SECTION 2. This act is effective when it becomes law and expires on June 30, 2008.

In the General Assembly read three times and ratified this the 5th day of June, 2006.

Became law on the date it was ratified.

H.B. 1822

Session Law 2006-5

AN ACT TO ALLOW MAYLAND COMMUNITY COLLEGE TO SELL AT PRIVATE SALE THE FORMER LEXINGTON FURNITURE PROPERTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2003-320, as amended by Section 81 of S.L. 2004-203, reads as rewritten:

"**SECTION 1.** Mayland Community College may, with prior approval of the State Board of Community Colleges and notwithstanding G.S. 115D-15 or Article 12 of Chapter 160A of the General Statutes:

- (1) ~~Notwithstanding the provisions of G.S. 160A-272, lease~~ Lease or sell at private sale the former Lexington Furniture Building Properties for terms it deems appropriate; and
- (2) Sell at private sale the former Hampshire Hosiery Building to Mitchell County Development Foundation, Inc., for such consideration as it deems sufficient."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of June, 2006.

Became law on the date it was ratified.

S.B. 912

Session Law 2006-6

AN ACT TO PHASE OUT THE POSSESSION OR OPERATION OF VIDEO GAMING MACHINES BY LIMITING THE NUMBER OF VIDEO GAMING MACHINES THAT MAY BE POSSESSED OR OPERATED TO TWO PER LOCATION ON OCTOBER 1, 2006, AND TO ONE PER LOCATION ON MARCH 1, 2007, AND TO PROHIBIT POSSESSION OR OPERATION OF VIDEO GAMING MACHINES AS OF JULY 1, 2007, EXCEPT PURSUANT TO A TRIBAL-STATE COMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. Effective October 1, 2006, G.S. 14-306.1(b) reads as rewritten:

"(b) Prohibition of More Than ~~Three~~ Two Existing Video Gaming Machines at One Location. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation at one location more than ~~three~~ two video gaming machines as defined in subsection (c)."

SECTION 2. Effective March 1, 2007, G.S. 14-306.1(b), as amended by Section 1 of this act, reads as rewritten:

"(b) Prohibition of More Than ~~Two~~ One Existing Video Gaming Machines Machine at One Location. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation at one location more than ~~two~~ one video gaming ~~machines~~ machine as defined in subsection (c)."

SECTION 3. G.S. 14-306.1 is repealed.

SECTION 4. Part 1 of Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-306.1A. Types of machines and devices prohibited by law; penalties.

(a) Ban on Machines. – It shall be unlawful for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any video gaming machine as defined in subsection (b) of this section, except for the exemption for a federally recognized Indian tribe under subsection (e) of this section for whom it shall be lawful to operate and possess machines as listed in subsection (b) of this section if conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe, as provided in G.S. 147-12(14) and G.S. 71A-8.

(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of illustration:

- (1) A video poker game or any other kind of video playing card game.
- (2) A video bingo game.
- (3) A video craps game.
- (4) A video keno game.
- (5) A video lotto game.
- (6) Eight liner.

- (7) Pot-of-gold.
- (8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, or any other method that requires payment to activate play of any of the games listed in this subsection.

For the purpose of this section, a video gaming machine includes those that are within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video gaming machine does not include those that are within the scope of the exclusion provided in G.S. 14-306(b)(1).

(c) Exemption for Certain Machines. – This section shall not apply to:

- (1) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, lease, or transport them for use out-of-state, or
- (2) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, or lease video gaming machines for use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

To qualify for an exemption under this subsection, the machines must be disabled and not operable, unless the machines are located on Indian land where they may be lawfully operated under a Tribal-State Compact.

(d) Ban on Warehousing. – It is unlawful to warehouse any video gaming machine except in conjunction with the activities permitted under subsection (c) of this section.

(e) Exemption for Activities Under IGRA. – Notwithstanding any other prohibitions in State law, the form of Class III gaming otherwise prohibited by subsections (a) through (d) of this section may be legally conducted on Indian lands which are held in trust by the United States government for and on behalf of federally recognized Indian tribes if conducted in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8."

SECTION 5. G.S. 14-306.2 reads as rewritten:

"§ 14-306.2. Violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A a violation of the ABC laws.

A violation of ~~G.S. 14-306.1~~ G.S. 14-306.1A is a violation of the gambling statutes for the purposes of G.S. 18B-1005(a)(3)."

SECTION 6. G.S. 147-12(14) reads as rewritten:

"(14) To negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the State consistent with State law and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming activities in this State as permitted under federal law. The Governor shall report any gaming compact, or amendment thereto, to the Joint Legislative Commission on Governmental Operations."

SECTION 7. G.S. 14-306.1(i) reads as rewritten:

"(i) Registration With Sheriff. – No later than October 1, 2000, the owner of any video game which is regulated by this section shall register the machine with the Sheriff of the county in which the machine is located using a standardized registration form supplied by the Sheriff. The registration form shall be signed under oath by the owner of the machine. A material false statement in the registration form shall subject the owner to seizure of the machine under G.S. 14-298 in addition to any other punishment imposed by law. ~~At any time that the video gaming machine is moved to a different location, the owner shall reregister the machine with the Sheriff prior to its being placed in operation.~~ At a minimum, the registration form shall require that the registrant provide evidence of the date on which the machine was placed in operation, the serial number of the machine, the location of the facility at which the machine is operated, and the name of the owner of the facility at which the machine is operated. Each Sheriff shall report to the Joint Legislative Commission on Governmental Operations no later than November 1, 2000, on the total number of machines registered in that county, itemizing how many locations have one, two, or three machines. No machine may be moved from its registered location except in conjunction with the activities described in subsections (l) and (m) of this section."

SECTION 8. G.S. 14-306.1(l) reads as rewritten:

~~"(l) Exemption for Certain Machines. — This section shall not apply to assemblers, manufacturers, and transporters of video gaming machines who assemble, manufacture, and transport them for sale in another state as long as the machines, while located in this State, cannot be used to play the prohibited games, and does not apply to those who assemble, manufacture, and sell such machines for the use only by a federally recognized Indian Tribe if such machines may be lawfully used on Indian Land under the Indian Gaming Regulatory Act.~~

(l) Exemption for Certain Machines. – This section shall not apply to:

- (1) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, lease, or transport them for use out-of-state, or
- (2) Assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines who assemble, repair, manufacture, sell, or lease video gaming machines for use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

To qualify for an exemption under this subsection, the machines must be disabled and not operable, unless the machines are located on Indian land where they may be lawfully operated under a Tribal-State Compact."

SECTION 9. G.S. 14-306.1(m) reads as rewritten:

~~"(m) Ban on Warehousing. – It is unlawful to warehouse any video gaming machine except in conjunction with the permitted assembly, manufacture, and transportation of such machines under subsection (l) of this section. activities permitted under subsection (l) of this section."~~

SECTION 10. G.S. 105-256(d)(1) is repealed, but that repeal does not affect reports for activities prior to July 1, 2007.

SECTION 11. G.S. 14-309 reads as rewritten:

"§ 14-309. Violation made criminal.

(a) Any person who violates any provision of G.S. 14-304 through 14-309 is guilty of a Class 1 misdemeanor for the first offense, and is guilty of a Class ~~F~~H felony for a second offense and a Class ~~H~~G felony for a third or subsequent offense.

(b) Notwithstanding the provisions of subsection (a) of this section, any person violating the provisions of ~~G.S. 14-306.1~~ G.S. 14-306.1A involving the operation of five or more machines prohibited by that section is guilty of a Class G felony."

SECTION 12. Section 1 of this act becomes effective October 1, 2006, and applies to offenses committed on or after that date; Section 2 of this act becomes effective March 1, 2007, and applies to offenses committed on or after that date; and Sections 3 through 5, 10, and 11 become effective July 1, 2007, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective dates in this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. If a final Order by a court of competent jurisdiction prohibits possession or operation of video gaming machines by a federally recognized Indian tribe because that activity is not allowed elsewhere in this State, this act is void.

In the General Assembly read three times and ratified this the 6th day of June, 2006.

Became law upon approval of the Governor at 7:10 p.m. on the 6th day of June, 2006.

S.B. 1208

Session Law 2006-7

AN ACT TO REPEAL THE SUNSET ON LOCAL GOVERNMENT OPTIONAL COVERAGE UNDER THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 31.26(k) of S.L. 2004-124 reads as rewritten:

"**SECTION 31.26.(k)** This section becomes effective July 1, 2004, ~~and expires June 30, 2006.~~2004."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 2006.

Became law on the date it was ratified.

H.B. 1824

Session Law 2006-8

AN ACT TO ALLOW THE ROANOKE RAPIDS GRADED SCHOOL DISTRICT TO PERMIT THE USE OF PUBLIC SCHOOL BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE BIKEWALK VIRGINIA EVENT TO BE HELD IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58 or any other provision of law, the Roanoke Rapids Graded School District may enter into a contract, under terms and conditions set by the Roanoke Rapids Graded School District, that permits public school buses to be used from June 25, 2006, through June 28, 2006, for activities related to the BikeWalk Virginia event to be held in Halifax County.

State funds shall not be used for the use and operation of buses under this act.

Neither the State of North Carolina nor the Roanoke Rapids Graded School District shall incur any liability for any damages resulting from the use and operation of buses under this act. BikeWalk Virginia, Inc., shall carry liability insurance covering the use and operation of buses under this act.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of June, 2006.

Became law on the date it was ratified.

H.B. 1841

Session Law 2006-9

AN ACT TO INCREASE THE NUMBER OF MEMBERS ON THE SHELBY ABC BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9 of Chapter 832 of the 1969 Session Laws reads as rewritten:

"**Sec. 9.** In the event that a majority of the votes cast shall be for municipal liquor stores, the governing body of said municipality shall certify the results immediately to the State Board of Alcoholic Control and shall immediately create a municipal board of alcoholic control, to be composed of a chairman and two members who shall be well known for their character, ability, and business acumen. The members of the board shall be appointed by the governing body. At the time of the original appointments, one of said members shall be appointed for three years, one for two years, and one for one year, and as their terms expire their successors shall be appointed for terms of three years each. In the event any of the cities covered by this local act is allowed to increase the size of its Board, the governing body shall appoint the new members. The new members' terms shall begin on the same date, and their terms shall expire at the same time. Vacancies shall be filled by the governing body for the unexpired term. The board shall be known as the "(name of city) Board of Alcoholic Control": "(name of city) Alcoholic Beverage Control Board". The governing body of the municipality shall designate one of the members of the Board to serve as chairman, and the compensation of the chairman and all members of the Board shall be fixed by the governing body."

SECTION 2. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of ~~three~~ five members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman."

SECTION 3. Section 2 of this act applies to the City of Shelby only.

SECTION 4. Notwithstanding Section 9 of Chapter 832 of the 1969 Session Laws, as amended by Section 1 of this act, the governing body of the City of Shelby shall appoint two additional members, as authorized by this act, to serve initial terms that will be effective on or after July 1, 2006. One additional member's term shall expire on April 1, 2007, and the other shall expire on April 1, 2008. At the expiration of these

terms, each new member's term shall be for three-year terms thereafter. Members currently appointed to the board shall continue to serve their terms until the terms expire. In the event a member is removed or leaves the Board for any reason, the new member appointed to the Board shall fill the remainder of the unexpired term.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of June, 2006.

Became law on the date it was ratified.

H.B. 1863

Session Law 2006-10

AN ACT TO AUTHORIZE THE CITY OF MEBANE TO MAINTAIN SIDEWALKS LOCATED IN THE CITY'S EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of Mebane, being Chapter 514 of the 1973 Session Laws, is amended by adding a new section to read:

"Sec. 5.7. Sidewalk Maintenance in ETJ. The city may maintain sidewalks located in the city's extraterritorial planning jurisdiction under G.S. 160A-360."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of June, 2006.

Became law on the date it was ratified.

S.B. 1377

Session Law 2006-11

AN ACT TO AMEND THE TRANSITION PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO RESOLVE A TIME-SENSITIVE PROBLEM REGARDING THE EFFECTIVENESS OF CERTAIN FINANCING STATEMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-9-705 reads as rewritten:

"§ 25-9-705. **Effectiveness of action taken before effective date.**

...

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. – This act does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9. However, except as otherwise provided in subsections ~~(d) and (e)~~(d), (e), and (g) of this section and G.S. 25-9-706, the financing statement ceases to be effective at the earlier of:

- (1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

...

(g) Inapplicability of subdivision (c)(2) to certain financing statements. – With respect to an effective financing statement that:

- (1) Before July 1, 2001, was filed and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9,
- (2) Would satisfy the applicable requirements for perfection under this act, and
- (3) Was properly continued before July 1, 2001, such that the effectiveness of the financing statement would lapse after June 30, 2006, but before January 1, 2007, but for subdivision (c)(2) of this section,

subdivision (c)(2) of this section shall not apply to the financing statement and the filing of a continuation statement with respect to the financing statement is timely if the filing of the continuation statement occurs before the financing statement ceases to be effective and not before the earlier of (i) December 30, 2005, or (ii) six months before the effectiveness of the financing statement would lapse."

SECTION 2. Nothing in this act renders ineffective a continuation statement that was filed and effective before the effective date of this act.

SECTION 3. This act becomes effective June 30, 2006, or when it becomes law, whichever is earlier.

In the General Assembly read three times and ratified this the 8th day of June, 2006.

Became law upon approval of the Governor at 11:04 a.m. on the 14th day of June, 2006.

H.B. 1882

Session Law 2006-12

AN ACT TO REGULATE HUNTING FROM THE RIGHT-OF-WAY IN GREENE COUNTY AND TO REQUIRE WRITTEN PERMISSION BEFORE HUNTING ON THE POSTED LANDS OF ANOTHER IN GREENE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful for a person to hunt, take, or kill any wild animal or game bird with a firearm or bow and arrow, in the person's possession, from, on, or across the right-of-way of a public road in Greene County.

SECTION 2. It is unlawful to hunt, take, or kill any wild animal or game bird on the posted lands of another in Greene County without having on one's person the written permission of the owner or lessee dated within the current hunting season.

SECTION 3. As used in this act, the terms "to hunt" and "to take" are defined as provided in G.S. 113-130.

SECTION 4. Violation of this act is a Class 3 misdemeanor, punishable for a first offense by a fine of not less than one hundred dollars (\$100.00) and punishable for a second or subsequent offense by a fine of not less than two hundred dollars (\$200.00).

SECTION 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 6. This act applies only to Greene County.

SECTION 7. This act becomes effective October 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

Became law on the date it was ratified.

H.B. 2527**Session Law 2006-13**

AN ACT TO ALLOW RESIDENTS OF OTHER COUNTIES OR STATES WHO ATTENDED CHEROKEE COUNTY SCHOOLS IN THE 2005-2006 YEAR TO CONTINUE ATTENDANCE WITHOUT PAYMENT OF TUITION.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 115C-366.1, any student who was not a resident of Cherokee County but attended the Cherokee County public school system during the 2005-2006 school year may continue to attend without payment of tuition until that student graduates or leaves the Cherokee County public school system.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 2006.

Became law on the date it was ratified.

H.B. 2000**Session Law 2006-14**

AN ACT AMENDING THE CHARTER OF THE TOWN OF MINT HILL TO AUTHORIZE THE TOWN TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE TOWN'S PUBLIC NUISANCE ORDINANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 73 of the 1971 Session Laws, being the Charter of the Town of Mint Hill, as amended by Chapter 179 of the 1973 Session Laws and Chapter 224 of the 1977 Session Laws, is amended by adding the following new Article:

"ARTICLE XI. POLICE POWERS.

"Sec. 11.1. Public Nuisance Ordinance. The Town of Mint Hill may notify a chronic violator of the Town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the Town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the Town gave notice of violation at least three times under any provision of the public nuisance ordinance."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 2006.

Became law on the date it was ratified.

H.B. 2001**Session Law 2006-15**

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN THE TOWNS OF MATTHEWS AND MINT HILL.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-10 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the City of Henderson and the ~~Town~~ Towns of Matthews, Mint Hill, and Louisburg. Section 2 of this act applies only to the ~~Town~~ Towns of Mint Hill and Louisburg."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of June, 2006.

Became law on the date it was ratified.

H.B. 1806

Session Law 2006-16

AN ACT TO ADD TYRRELL COUNTY TO THE LIST OF COUNTIES WHERE THE BOARD OF COMMISSIONERS MAY REQUIRE THE REGISTER OF DEEDS TO HAVE A CERTIFICATION THAT NO TAXES ARE DUE ON REAL PROPERTY BEFORE ACCEPTING FOR REGISTRATION A DEED TRANSFERRING OWNERSHIP OF THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 20th day of June, 2006.

Became law on the date it was ratified.

H.B. 1898

Session Law 2006-17

AN ACT TO MAKE CORPORATE INCOME TAX ADJUSTMENTS INAPPLICABLE TO S CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-131.2 reads as rewritten:

"§ **105-131.2. Adjustment and characterization of income.**

(a) Adjustment. ~~– The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-134.6(b), (c), and (d).~~ Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-134.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) ~~shall be~~ are characterized as though received or incurred by the S Corporation and not its shareholder."

SECTION 2. G.S. 105-134.6(a) reads as rewritten:

"(a) S Corporations. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be~~ Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in ~~subsections (b), (c), and (d) of this section.~~"

SECTION 3. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

...
 (3a) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.
 ..."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2006.

In the General Assembly read three times and ratified this the 19th day of June, 2006.

Became law upon approval of the Governor at 7:05 p.m. on the 21st day of June, 2006.

H.B. 1892

Session Law 2006-18

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO MAKE OTHER CHANGES TO MORE CLOSELY CONFORM TO FEDERAL TAX LAW.

The General Assembly of North Carolina enacts:

SECTION 1. 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 January 1, ~~2005, 2006~~, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2005, that increase North Carolina taxable income for the 2005 taxable year become effective for taxable years beginning on or after January 1, 2006.

SECTION 3. G.S. 105-32.8 reads as rewritten:

"§ 105-32.8. **Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the gross estate tax

imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section 2011 of the Code, the personal representative must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section forfeits the right to any refund due by reason of the determination."

SECTION 4. G.S. 105-130.20 reads as rewritten:

"§ 105-130.20. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the income year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination."

SECTION 5. G.S. 105-159 reads as rewritten:

"§ 105-159. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 6. G.S. 105-197.1 reads as rewritten:

"§ 105-197.1. Federal corrections.

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified

of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined net gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 7. G.S. 105-130.17 is amended by adding a new subsection to read:

"(g) A corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the sixth month following the close of its income year."

SECTION 8. G.S. 105-155(a) reads as rewritten:

"(a) ~~Where and When to File Return.~~ – An income tax return shall be filed as ~~prescribed by the Secretary at the place and in the form prescribed by the Secretary.~~ The income tax return of every taxpayer reporting on a calendar year basis ~~shall be filed~~ is due on or before the fifteenth day of April in each year, ~~and the year.~~ The income tax return of every taxpayer reporting on a fiscal year basis ~~shall be filed~~ is due on or before the fifteenth day of the fourth month following the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income tax return is due at a later date under section 6072(c) of the Code. The return of a nonresident alien affected by that Code section is due on or before the fifteenth day of the sixth month following the close of the taxable year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

SECTION 9. G.S. 105-151.11(b) reads as rewritten:

"(b) Employment Related Expenses. – The amount of employment-related expenses for which a credit may be claimed may not exceed ~~two thousand four hundred dollars (\$2,400)~~ three thousand dollars (\$3,000) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed ~~four thousand eight hundred dollars (\$4,800)~~ six thousand dollars (\$6,000) if the taxpayer's household includes more than one qualifying individual. The amount of employment-related expenses for which a credit may be claimed is reduced by the amount of employer-provided dependent care assistance excluded from gross income."

SECTION 10. Sections 1, 2, and 10 of this act are effective when they become law. Sections 3 through 6 of this act become effective July 1, 2006, and apply to federal determinations made on or after that date. Sections 7 through 9 of this act are effective for taxable years beginning on or after January 1, 2006.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

Became law upon approval of the Governor at 7:07 p.m. on the 21st day of June, 2006.

H.B. 1938**Session Law 2006-19****AN ACT TO TREAT COMMERCIAL LOGGING MACHINERY THE SAME AS FARM MACHINERY UNDER THE SALES TAX.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

" ...

(4f) Sales of the following to a person who is engaged in the commercial logging business:

- a. Logging machinery. – Logging machinery is machinery used to harvest raw forest products for transport to first market.
- b. Attachments and repair parts for logging machinery.
- c. Lubricants applied to logging machinery.
- d. Fuel used to operate logging machinery.

" ..."

SECTION 2. Article 5F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-187.53. Commercial logging items.

This Article does not apply to an item that is exempt from sales and use tax under G.S. 105-164.13(4f)."

SECTION 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended by this act before the effective date of this act, nor does it affect the right to any refund of a tax that accrued under the amended statute before the effective date of its amendment.

SECTION 4. This act becomes effective July 1, 2006, and applies to items purchased on or after that date.

In the General Assembly read three times and ratified this the 14th day of June, 2006.

Became law upon approval of the Governor at 7:15 p.m. on the 21st day of June, 2006.

S.B. 329**Session Law 2006-20****AN ACT TO APPOINT MEMBERS OF THE PUBLIC TO THE BOARD OF DIRECTORS OF THE NORTH CAROLINA PARTNERSHIP FOR CHILDREN, INC., UPON THE RECOMMENDATION OF THE MAJORITY AND MINORITY LEADERS OF THE SENATE.**

Whereas, G.S. 143B-168.12(a)(1)j. authorizes the General Assembly to appoint a member of the public to the Board of Directors of the North Carolina Partnership for Children, Inc., upon recommendation of the Majority Leader of the Senate; and

Whereas, the Majority Leader of the Senate recommends that the General Assembly appoint Charles Morris from Cumberland County to this position; and

Whereas, G.S. 143B-168.12(a)(1)l. authorizes the General Assembly to appoint a member of the public to the Board of Directors of the North Carolina

Partnership for Children, Inc., upon recommendation of the Minority Leader of the Senate; and

Whereas, the Minority Leader of the Senate recommends that the General Assembly appoint Samuel Scott Page of Rockingham County to this position; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Charles Morris from Cumberland County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Majority Leader of the Senate for a term beginning January 2, 2005, and ending January 1, 2008.

SECTION 1.(b) Samuel Scott Page of Rockingham County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Minority Leader of the Senate for a term beginning January 2, 2005, and ending January 1, 2008.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

S.B. 1265

Session Law 2006-21

AN ACT TO REPEAL THE PROHIBITION ON BEAR HUNTING IN PERQUIMANS COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 582 of the 1979 Session Laws is repealed as it applies to Perquimans County.

SECTION 2. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

...

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter ~~264~~; ~~Session Laws 1979, Chapter 582.~~ 264.

..."

SECTION 3. The 2006 bear hunting season shall be from November 11 through November 18 and December 11 through December 23. Subsequent seasons shall be established by the Wildlife Resources Commission.

SECTION 4. This act applies only to Perquimans County.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

H.B. 1852

Session Law 2006-22

AN ACT PROVIDING THAT NO GOVERNMENTAL ENTITY OUTSIDE OF LINCOLN COUNTY MAY ANNEX ANY PORTION OF THAT COUNTY, OR

EXTEND ITS EXTRATERRITORIAL JURISDICTION INTO LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, no incorporated city, town, or village outside of Lincoln County may annex any territory within Lincoln County or extend its extraterritorial planning jurisdiction into Lincoln County.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

H.B. 1864

Session Law 2006-23

AN ACT TO FOSTER FAIR COMPETITION IN SCHOOL ATHLETICS IN CERTAIN COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12(23) reads as rewritten:

"(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. – The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level. If the State Board of Education does authorize a designated organization to apply and enforce the Board's rules, that designated organization shall permit the creation of a small school conference to be afforded all rights and privileges granted to other conferences within that designated organization if all of the following criteria are met:

- a. There are at least five small schools within a geographic region. For purposes of this subdivision, 'small school' shall mean a high school with an average daily membership of 300 students or less.
- b. The small school conference consists of only small schools.
- c. The small school conference is open to all small schools in the geographic region.
- d. Participation in the small school conference is optional."

SECTION 2. A small school conference may be created for the 2006-2007 school year provided the designated organization authorized by the State Board of Education under G.S. 115C-12(23) is notified no later than September 15, 2006. Schools joining a small school conference by that date may withdraw, without penalty, from any scheduling contracts previously entered into for the 2006-2007 season.

SECTION 3. This act applies only to Dare, Hyde, Martin, Tyrrell, and Washington Counties.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

H.B. 2110**Session Law 2006-24**

AN ACT TO REPEAL LOCAL ACTS CONCERNING HOSPITALS IN CRAVEN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 922 of the Session Laws of 1987 is repealed.

SECTION 2. Chapter 190 of the Session Laws of 1989 is repealed.

SECTION 3. S.L. 1999-15 is repealed.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

H.B. 2273**Session Law 2006-25**

AN ACT TO PERMIT LAW ENFORCEMENT OFFICERS AND EMPLOYEES TO USE ALL-TERRAIN VEHICLES ON PUBLIC STREETS AND HIGHWAYS IN CURRITUCK COUNTY AND IN THE TOWNS OF CRAMERTON AND DALLAS, AND TO PERMIT LAW ENFORCEMENT OFFICER USE IN THE TOWN OF HIGHLANDS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2004-108, as amended by Section 1 of S.L. 2005-305, reads as rewritten:

"SECTION 3. Section 1 of this act applies to the City of Albemarle and the Towns of Beaufort, Highlands, Southern Shores, and Mint Hill only. Section 2 of this act applies to the Towns of Cramerton, Dallas, Duck, Kill Devil Hills, Kitty Hawk, Nags Head, and the City of Kings Mountain and the County of Currituck only. The term 'municipal employee' shall include employees of a county."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law on the date it was ratified.

H.B. 818**Session Law 2006-26**

AN ACT RELATING TO THE CURRENT STATUS OF DRIVERS AS EMPLOYEES OR INDEPENDENT CONTRACTORS UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-19.1 reads as rewritten:

"§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor that is licensed by a governmental motor vehicle regulatory agency and (ii) the independent contractor is operating the vehicle pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

Became law upon approval of the Governor at 7:38 p.m. on the 26th day of June, 2006.

S.B. 1328

Session Law 2006-27

AN ACT TO AUTHORIZE THE CITY OF SALUDA AND THE TOWN OF FAISON TO REGULATE GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS WITHIN THE CITY OR ON PROPERTY OWNED OR LEASED BY THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Saluda and the Town of Faison only.

SECTION 2. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city.

By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2006.

Became law on the date it was ratified.

S.B. 1512

Session Law 2006-28

AN ACT TO RAISE THE FINE FOR OVERTIME PARKING FROM FIVE DOLLARS TO NO MORE THAN FIFTY DOLLARS IN THE CITY OF SANFORD.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Sanford only.

SECTION 2. G.S. 20-162.1(a) reads as rewritten:

"(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal or Department of Transportation ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person found responsible for an infraction pursuant to this section shall be subject to a penalty of not more than ~~five dollars (\$5.00)~~ fifty dollars (\$50.00)."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2006.

Became law on the date it was ratified.

H.B. 447

Session Law 2006-29

AN ACT TO PROVIDE THAT CREDITABLE SERVICE FOR LAW ENFORCEMENT OFFICERS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF ABSENCE WHEN IN RECEIPT OF

WORKERS' COMPENSATION BENEFITS AS A RESULT OF CERTAIN
INJURIES INCURRED IN THE LINE OF DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 128-26(l) reads as rewritten:

"(l) Notwithstanding any other provision of this Chapter, any member may purchase creditable service for periods of employer approved leaves of absence when in receipt of benefits under the North Carolina Workers' Compensation Act. This service shall be purchased by paying a cost calculated in the following manner:

- (1) Leaves of Absence Terminated Prior to July 1, 1983. – The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminated upon return to service prior to July 1, 1983, shall be a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the board of trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.
- (2) Leaves of Absence Terminating On and After July 1, 1983. – The cost to a member whose employer approved leave of absence, when in receipt of benefits under the North Carolina Workers' Compensation Act, terminates upon return to service on and after July 1, 1983, shall be a lump sum amount due and payable to the Annuity Savings Fund within six months from return to service equal to the total employee and employer percentage rates of contribution in effect at the time of purchase and based on the annual rate of compensation of the member immediately prior to the leave of absence; Provided, however, the cost to a member whose amount due is not paid within six months from return to service shall be the amount due plus one percent (1%) per month penalty for each month or fraction thereof the payment is made beyond the six-month period.

Whenever the creditable service purchased pursuant to this subsection is for a period that occurs during the four consecutive calendar years that would have produced the highest average annual compensation pursuant to G.S. 128-21(5) had the member not been on leave of absence without pay, then the compensation that the member would have received during the purchased period shall be included in calculating the member's average final compensation. In such cases, the compensation that the member would have received during the purchased period shall be based on the annual rate of compensation of the member immediately prior to the leave of absence.

In the case of a law enforcement officer electing to purchase service under this section who is in receipt of benefits under the North Carolina Workers' Compensation Act due to serious bodily injury suffered in the line of duty as a result of an intentional or unlawful act of another, as certified by the head of the employing law enforcement agency, and whose approved leave of absence terminates on or before a return to service on and after August 1, 2006, the employer percentage rate of contribution payable under subdivision (2) of this subsection shall be made by the employer that granted the leave of absence. The cost to the law enforcement officer shall be reduced by the amount paid by the employer. For purposes of this subsection, "serious bodily injury" means bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Nothing in this subsection prevents an employer from voluntarily paying all or a part of the employee portion of the total cost of the service credit purchased, and the employer does not discriminate against any eligible law enforcement officer in this subsection employed by the employer by paying that portion of cost. To the extent paid by the employer, the employee portion paid by the employer shall be credited to the Pension Accumulation Fund; to the extent paid by the member, the employee portion paid by the member shall be credited to the member's annuity savings account. A member shall pay any part of the employee portion of the total cost not paid by the employer."

SECTION 2. This act becomes effective August 1, 2006, and applies to members who return to service from an approved leave of absence on or after that date.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law upon approval of the Governor at 12:00 p.m. on the 29th day of June, 2006.

H.B. 2097

Session Law 2006-30

AN ACT TO MAKE CLARIFYING CHANGES TO THE PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-304(a1) reads as rewritten:

"(a1) Electronic Listing. – The board of county commissioners may, by resolution, provide for electronic listing of ~~business~~—personal property in accordance with procedures prescribed by the board. If the board of county commissioners allows electronic listing of ~~business~~—personal property, the assessor must publish this information, including the timetable and procedures for electronic listing, in the notice required by G.S. 105-296(c)."

SECTION 2. G.S. 105-307 reads as rewritten:

"§ 105-307. Length of listing period; extension; preliminary work.

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the

listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

- (1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.
- (2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.
- (3) If the county has provided for electronic listing of ~~business~~-personal property under G.S. 105-304, the period for electronic listing of business personal property may be extended up to June 1.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property is as provided in subsection (b) of this section.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 3. G.S. 105-330.10 reads as rewritten:

"§ 105-330.10. (Effective until July 1, 2009) Disposition of interest.

Sixty percent (60%) of the first month's interest collected on unpaid taxes pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account created within the Treasurer's Office. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semiannually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account."

SECTION 4. G.S. 105-277.4 is amended by adding a new subsection to read:

"(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. G.S. 105-321(d) is repealed.

SECTION 6. G.S. 105-378 is amended adding a new subsection to read:

"(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the Property

Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 7. G.S. 105-373(a) reads as rewritten:

- "(a) Annual Settlement of Tax Collector. –
- (1) Preliminary Report. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:
 - a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and
 - b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.) The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.
 - (2) Insolvents. – Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.
 - (3) Settlement for Current Taxes. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year.
 - a. In the settlement the tax collector shall be charged with:
 1. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;
 2. All penalties, interest, and costs collected by him in connection with taxes for the current year; and
 3. All other sums collected by him.
 - b. The tax collector shall be credited with:
 1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;
 2. Releases duly allowed by the governing body;
 3. The principal amount of taxes constituting liens on real property;

4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
5. Discounts allowed by law; ~~and~~
6. Commissions (if any) lawfully payable to the tax collector as ~~compensation~~; compensation; and
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

- (4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:
 - a. Give bond satisfactory to the governing body;
 - b. Receive the tax receipts and tax records representing the uncollected taxes;
 - c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
 - d. Receive compensation as determined by the governing body."

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law upon approval of the Governor at 12:01 p.m. on the 29th day of June, 2006.

H.B. 677

Session Law 2006-31

AN ACT AUTHORIZING THE TREASURER TO DESIGNATE A PERSON TO REPRESENT THE TREASURER ON THE STATE BOARD OF COMMUNITY COLLEGES AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-2.1(b) reads as rewritten:

"(b) The State Board of Community Colleges shall consist of 21 members, as follows:

- (1) The Lieutenant Governor ~~(or a person designated by the Lieutenant Governor)~~ Governor or the Lieutenant Governor's designee shall be a member ex officio.
- (2) The Treasurer of North Carolina ~~Carolina~~ or the Treasurer's designee shall be a member ex officio.

..."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2006.

Became law upon approval of the Governor at 12:41 p.m. on the 29th day of June, 2006.

H.B. 2120

Session Law 2006-32

AN ACT TO STRENGTHEN THE OVERSIGHT ROLE OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES; TO REPEAL THE LEGISLATIVE STUDY COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES; TO DIRECT THE OVERSIGHT COMMITTEE TO STUDY CERTAIN ISSUES; AND TO MAKE A RECOMMENDATION REGARDING INCREASING HEALTH CARE COVERAGE TO INCLUDE MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-244. Committee authority.

The Committee may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a committee of the General Assembly. Any cost of providing information to the Committee not covered by G.S. 120-19.3 may be reimbursed by the Committee from funds appropriated to it for its continuing study."

SECTION 2. Article 23 of Chapter 120 of the General Statutes is repealed.

SECTION 3. The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study the following issues and report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly:

- (1) Mechanisms to allow area authorities and county programs to purchase bed days from the State psychiatric hospitals. The LOC shall consider options for holding area authorities and county programs accountable for their use of State psychiatric institutions, provide incentives to increase community capacity, and options for ensuring the State institutions have a sufficient funding stream to ensure quality care to patients and a stable and well-qualified workforce.
- (2) Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the mental health, developmental disabilities, and substance abuse system. As part of the study, the LOC shall examine the impact of the waiver on Piedmont Behavioral

Health's ability to implement its management functions including utilization management for Medicaid services, consumer satisfaction, provider monitoring, use of best practices, and any other matters the LOC determines are relevant. If the LOC determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it shall also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.

- (3) Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories.

SECTION 4. The Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

- (1) Funding mechanisms;
- (2) Target populations;
- (3) Interagency collaboration at the State and local levels; and
- (4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The Commissions may report their findings and recommendations to the 2007 Regular Session of the 2007 General Assembly.

SECTION 5. The act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 2006.

Became law upon approval of the Governor at 12:50 p.m. on the 29th day of June, 2006.

H.B. 1915

Session Law 2006-33

AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS, TO SIMPLIFY THE TAX PAYMENT REQUIREMENTS FOR SEMIMONTHLY TAXPAYERS, AND TO TREAT TANGIBLE PERSONAL PROPERTY USED IN MODULAR HOMES THE SAME AS TANGIBLE PERSONAL PROPERTY USED IN OTHER HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by amending or adding the following definitions to read:

"§ 105-164.3. **Definitions.**

The following definitions apply in this Article:

- (01) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call

forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

...

(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.

(27a) Prepaid wireline calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of wireline telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(27b) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(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.~~ in November 2005.

...

(48) Telecommunications service. – ~~The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing. The term includes mobile telecommunications service and vertical services. Vertical services are switch-based services offered in connection with a telecommunications service, such as call forwarding services, caller ID services, and three way calling services.~~ points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose

primary purpose for using the service is to obtain the processed data or information.

- b. The sale, installation, maintenance, or repair of tangible personal property.
- c. Directory advertising and other advertising.
- d. Billing and collection services provided to a third party.
- e. Internet access service.
- f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
- g. Ancillary service.
- h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

SECTION 2. G.S. 105-164.4(a)(4c) and (4d) read as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) **(Effective for sales made before July 1, 2007)** 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 1/2%).

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. ~~Telecommunications service is~~ These services are taxed in accordance with G.S. 105-164.4C.

(4d) The sale or recharge of prepaid telephone calling service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service."

SECTION 3. G.S. 105-164.4B(a)(3) reads as rewritten:

"§ 105-164.4B. Sourcing principles.

(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

- (1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.
- (3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:

- a. The business or home address of the purchaser.
- b. The billing address of the purchaser or, if the product is a prepaid ~~telephone~~ wireless calling service ~~that authorizes the purchase of mobile telecommunications service~~, the location associated with the mobile telephone number.
- c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. G.S. 105-164.4C reads as rewritten:

"§ 105-164.4C. ~~Tax on telecommunications.~~ Telecommunications service and ancillary service.

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

- (1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.
- (2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:
 - a. The call both originates and terminates in this State.
 - b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.
- (3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

- (1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is ~~authorized by a prepaid telephone~~ wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is

included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

- (2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.
- (3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.

(b) ~~Included in Gross Receipts. Gross receipts derived from telecommunications service include the following:~~

- (1) ~~Receipts from flat rate service, service provided on a call by call basis, mobile telecommunications service, and private telecommunications service.~~
- (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.~~
- (3) ~~Customer access line charges billed to subscribers for access to the intrastate or interstate interexchange network.~~
- (4) ~~Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.~~

(c) ~~Excluded From Gross Receipts. Gross receipts derived from telecommunications service do not include any of the following:~~

- (1) ~~Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).~~
- (2) ~~Telecommunications services that are resold as part of a prepaid telephone calling service.~~
- (3) ~~911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.~~
- (4) ~~Allowable surcharges imposed to recoup assessments for the Universal Service Fund.~~
- (5) ~~Receipts of a pay telephone provider from the sale of pay telephone service.~~
- (6) ~~Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.~~
- (7) ~~Paging service, unless the service provides two way communication.~~
- (8) ~~Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.~~
- (9) ~~Receipts from the sale, installation, maintenance, or repair of tangible personal property.~~

- ~~(10) Directory advertising and yellow page classified listings.~~
 - ~~(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.~~
 - ~~(12) Information services. — An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.~~
 - ~~(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.~~
 - ~~(14) Billing and collection services.~~
 - ~~(15) Charges for bad checks or late payments.~~
 - ~~(16) Charges to a State agency or to a local unit of government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.~~
- (d) Bundled Services. — When a taxable telecommunications service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:
- (1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.
 - (2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.
- (e) Private Line. — The gross receipts derived from private telecommunications service are sourced as follows:
- (1) If all the customer's channel termination points are located in this State, the service is sourced to this State.
 - (2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.
 - (3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:
 - a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.
 - b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

- (4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) Call Center Cap. The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars (\$50,000) a calendar year. This cap applies separately to each legal entity.

(g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

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

(01) Ancillary service. – Defined in G.S. 105-164.3.

(1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid wireline telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 5. G.S. 105-164.13 is amended by adding the following subdivision to read:

"(54) The following telecommunications services and charges:

a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. §

153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).

- b. Pay telephone service.
- c. 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.
- d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.
- e. Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government."

SECTION 6. G.S. 105-164.14(b) and (c) read as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual 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—electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.
- (2) Educational institutions not operated for profit.
- (3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.
- (4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

Sales and use tax liability indirectly incurred by a nonprofit 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 nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

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 for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(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~~ electricity, telecommunications service, and ancillary 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) (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.
- (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. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~telecommunications service~~ these services under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming."

SECTION 8. 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 and ancillary 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 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 9. G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Returns and payment of taxes.

(a) General. – Sales and use taxes are payable ~~quarterly, monthly, or semimonthly as specified in this section.~~ when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a

form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars (\$100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(b1) Monthly. – A taxpayer who is consistently liable for more than one hundred dollars (\$100.00) ~~but less than ten thousand dollars (\$10,000)~~ a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) ~~Semimonthly. Prepayment.~~ – A taxpayer who is consistently liable for at least ten thousand dollars (\$10,000) a month in State and local sales and use taxes must ~~pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.~~

~~A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety five percent (95%) of the lesser of the following and includes the underpayment with the monthly return for those semimonthly payment periods:~~

- ~~(1) The amount due for each semimonthly payment period.~~
- ~~(2) The average semimonthly payment for the prior calendar year.~~

~~make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:~~

- ~~(1) The amount of tax due for the current month.~~
- ~~(2) The amount of tax due for the same month in the preceding year.~~
- ~~(3) The average monthly amount of tax due in the preceding calendar year.~~

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns ~~in accordance with the appropriate schedule as required by this section.~~ In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of

business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's ~~direction until notified in writing to file and pay under a different schedule.~~ direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) **(Effective for taxable years ending before January 1, 2010)** Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2010)** Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 10. G.S. 105-113(b) reads as rewritten:

"(b) Report and Payment. – The tax imposed by this section is payable ~~quarterly, semimonthly, quarterly~~ or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule ~~that applies to its~~ and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly. ~~An electric power company is not subject to interest on or penalties for an underpayment for a semimonthly or monthly payment period if the electric power company timely pays at least ninety-five percent (95%) of the amount due for each semimonthly or monthly payment period and includes the underpayment with the quarterly return for those semimonthly or monthly payment periods.~~

A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

- (1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

- (4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 11. G.S. 105-164.4(a)(8) reads as rewritten:

- "(8) The rate of two and one-half percent (2.5%) applies to the sales price of each modular home ~~sold~~, sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser. ~~For the purposes of this subdivision, the retail sale is deemed to be the~~ The sale of a modular home to a modular homebuilder. homebuilder is considered a retail sale. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home."

SECTION 12. G.S. 105-164.42H(a)(3) is repealed.

SECTION 13. G.S. 105-187.43 reads as rewritten:

"§ 105-187.43. Payment of the tax.

(a) ~~Payment. – The tax imposed by this Article is payable semimonthly in accordance with the schedule set in G.S. 105-164.16 for semimonthly payments of sales and use taxes. monthly. A monthly payment is due by the 20th day of the month following the calendar month in which liability for the tax accrues.~~ The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) ~~Small Underpayments. – A person is not subject to interest on or penalties for an underpayment of a semimonthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars (\$10,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

- (1) The amount of tax due for the current month.
- (2) The amount of tax due for the same month in the preceding year.
- (3) The average monthly amount of tax due in the preceding calendar year.

(c) ~~Return. – A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.~~

SECTION 14. Section 12 of this act becomes effective June 1, 2006. Section 11 of this act becomes effective July 1, 2006, and applies to purchases made on or after that date. Sections 9 through 10 and Section 13 of this act become effective October 1, 2007. The remainder of this act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

Became law upon approval of the Governor at 12:54 p.m. on the 29th day of June, 2006.

S.B. 1506**Session Law 2006-34**

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1998-112 is amended by adding a new subsection to read:

"(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the board of commissioners of the Town of St. Pauls may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law on the date it was ratified.

S.B. 1526**Session Law 2006-35**

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF REIDSVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Reidsville are reduced by removing the following described property:

Beginning at a point in the eastern right-of-way of McCoy Road (SR-2437, formerly Port McCoy Rd), said point being northeasterly approximately 0.1 mi. from the intersection of Pin Tail Drive (SR-2938) and McCoy Road, said point also being a corner between Dora D. Martin and The City of Reidsville (formerly Raymond C. Snipes), thence along their lines the following six calls, S 61 deg. 01 sec. 22 min. E 300.26 ft., S 28 deg. 58 min. 38 sec. W 75.00 ft., S 46 deg. 31 min. 22 sec. E 93.87 ft., S 18 deg. 25 min. 05 sec. W 39.44 ft., S 42 deg. 22 min. 25 sec. E 385.78 ft. and S 04 deg. 39 min. 31 sec. W 166.20 ft. to an iron, thence N 61 deg. 01 min. 22 sec. W 854.14 ft to an Iron in the eastern right-of-way of McCoy Road, thence with the eastern right-of-way of McCoy Road N 28 deg. 58 min. 38 sec. E 400.00 ft. to the point of beginning and Being that 5.51 ac.+/- parcel as shown on a survey as prepared by Southern Mapping and Engineering Company dated March, 1973 and recorded with an Order of Confirmation and Consent Judgment recorded in the Rockingham County Clerk of Court, File No. 73 SP65.

SECTION 2. This act is effective from and after April 13, 1994.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law on the date it was ratified.

S.B. 1905**Session Law 2006-36**

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Asheville are extended to include the following described territory:

BEING ALL OF Lots 1, 3, 4 and 5 shown on a plat entitled "Hankins Properties, LLC" prepared by Ed Holmes & Associates, D. Brian Hughes, PLS, and recorded in Plat Book 100, Page 149 of the Buncombe County, North Carolina Register of Deeds Office, reference to which plat is hereby made for a more particular description of said lots.

SECTION 2. Hankins Properties, LLC, the owner of certain real property described in Section 1, and its successors and assigns, and pursuant to G.S. 160A-58.1(d) and G.S. 153A-344.1, has zoning vested rights in the real property described in Section 1 as follows:

- (1) The two site specific development plans approved at the April 13, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until April 13, 2010.
- (2) The two site specific development plans approved at the December 14, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until December 14, 2010.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law on the date it was ratified.

S.B. 1852**Session Law 2006-37**

AN ACT TO INCORPORATE THE TOWN OF MIDWAY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Midway is enacted to read:

"CHARTER OF THE TOWN OF MIDWAY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Midway are a body corporate and politic under the name 'Town of Midway'. The Town of Midway has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Midway are as follows:

Beginning at a point in the centerline intersection of Secondary Road # 1509 (Follansbee Road) and running thence in an easterly direction following the Forsyth County/Davidson County line to the southwest corner of PIN#6842-03-10-0045; thence in an easterly and northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-10-0045; thence in an easterly direction along the northern boundary of PIN#6842-03-10-2004; thence in an easterly direction along the northern boundary of PIN#6842-03-10-4023; thence in an easterly direction across Secondary Road #3022 (Briarcreek Drive); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-19-7907, (2) PIN#6841-01-19-8699, (3) PIN#6841-01-29-1926; thence in an easterly direction across Secondary Road # 1975 (Hayes Road); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-29-6811, (2) PIN#6841-01-29-8897, (3) PIN#6841-01-29-9888; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-302304; thence in an easterly direction along the northern boundary of the following 8 parcels, (1) PIN#6842-03-30-3899, (2) PIN#6842-03-30-4898, (3) PIN#6842-03-30-6827, (4) PIN#6842-03-30-7817, (5) PIN#6842-03-30-7886, (6) PIN#6842-03-30-8886, (7) PIN# 6842-03-30-9896, (8) FIIM#6842-U3-4U-U8ys; thence in an easterly direction along the northern boundary of PIN#6842-03-40-2846 to the southwest corner of PIN#6842-03-41-3070; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-41-3070 to the centerline of Secondary Road #1706 (Old Lexington Road); thence continuing on from the centerline intersection of Old Lexington Road in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#6842-03-40-4932, (2) PIN#6842-03-40-4769, (3) PIN#6842-03-40-5576, (4) PIN#6842-03-40-9411, (5) PIN#6842-03-40-7215, (6) PIN#6842-03-40-7143, (7) PIN#6842-03-40-7074, (8) PIN#6841-01-49-8923, (9) PIN#6841-01-49-8865, (10) PIN#6841-01-49-8793 to the centerline intersection of Secondary Road #1711 (Gumtree Road); thence continuing on from the centerline intersection of Gumtree Road in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6841-01-49-8793, (2) PIN#6841-01-49-6962, (3) PIN#6841-01-49-6651 to the centerline intersection of Secondary Road #2962 (Ridgeview Drive); thence continuing on from the centerline intersection of Ridgeview Drive in a southerly direction along the eastern boundary of the following 7 parcels, (1) PIN#6841-01-49-5277, (2) PIN#6841-01-49-5140, (3) PIN#6841 -01 48-5977, (4) PIN#6841-01-48-5 894, (5) PIN#6841-01-48-6722, (6) PIN#6841-01-48-6631, (7) PIN#6841-01-48-6560; to the northeast corner of PIN#6841-01-48-8108; thence in a southerly direction along the eastern boundary of PIN#6841-01-48-8108 to the northern boundary of PIN#6841-01-47-8793; thence in an easterly and southerly direction along the northern and eastern boundary of PIN#6841-01-47-8793 to the northern boundary of PIN#6841-01-46-8 846; thence in an easterly, southerly and westerly direction along the boundary Of PIN#6841-01-46-8846 to the northeast corner of PIN#6841-01-46-9114; thence in a southerly direction along the eastern boundary of PIN#6841-01-46-9114 to the northern boundary of PIN#6841-02-55-2265; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-02-55-2265, (2) PIN#6841-02-55-5263, (3) PIN#6841-02-55-6253; thence in an easterly direction across Secondary Road #2917 (Laura Drive); thence in an easterly direction along the northern boundary and in a southerly direction along the eastern boundary of PIN#6841-02-55-8267; thence in a southerly direction along the eastern boundary

of PIN#6841-02-55-8168 and PIN#6841-02-55-8069; thence in a southerly direction along the eastern boundary of PIN#6841-04-54-8865 to the northwest corner of PIN#6841-04-64-0811; thence in an easterly direction along the northern boundary of the following 7 parcels, (1) PIN#6841-0464-0811, (2) PIN#6841-04-64-1821, (3) PIN#6841-04-64-2831, (4) PIN#6841-04-64-3 841, (5) PIN#6841-04-64-6800, (6) PIN#6841-04-64-8704, (7) PIN#6841-04-74-0789 to the centerline' intersection of Secondary Road #1776 (Old Thomasville Road); thence continuing on from the centerline intersection of Old Thomasville Road in a southerly direction along the eastern boundary of PIN#6841-04-74-0789 and PIN#6841-04-74-2509 to the centerline intersection of Secondary Road # 1719 (Tom Livengood Road); thence continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction along the eastern boundary of the following 10 parcels, (1) PIN#6841-04-74-2355, (2) PIN#6841-04-74-2117, (3) PIN#6841-04-74-1049, (4) PIN#6841-04-74-1025, (5) PIN#6841-04-73-0979, (6) PIN#6841-04-73-0912, (7) PIN#6841-04-63-9739, (8) PIN#6841-04-63-8656, (9) PIN#6841-04-63-7561, (10) PIN#6841-04-63-5289; thence across Secondary Road (Brookdale Drive) and continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction along the eastern boundary of the following 18 parcels, (1) PIN#6841-04-63-5037, (2) PIN#6841-04-62-5 83 7, (3) PIN#6841-04-62-5735, (4) PIN#6841-04-62-5 623, (5) PIN#6841-04-62-5501, (6) PIN#6841-04-62-4400, (7) PIN#6841-04-52-823 0, (8) PIN#6841-04-61-3700, (9) PIN#6841-04-61-2589, (10) PIN#6841-04-61-2456, (11) PIN#6841-04-61-2324, (12) PIN#6841-04-61-2201, (13) PIN#6841-04-52-8230, (14) PIN#6841-04-50-7908, (15) PIN#6841-04-50-5992, (16) PIN#6841-04-50-4876, (17) PIN#6841-04-50-3 862, (18) PIN#6841-04-50-1777 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southeasterly direction along the western boundary of PIN#6841-04-50-63 83; thence continuing on from the center line intersection of Norman Shoaf Road in a southeasterly direction intersecting PIN#6840-02-79-0248 and continuing in an easterly direction along the southern boundary of PIN#6840-02-790248 to the northwest corner of PIN#6840-02-77-5742; thence in a southerly, westerly, and easterly direction along the western and southern boundary of PIN#6840-02-77-5742 to the western corner of PIN#6840-02-77-5455; thence in a easterly direction along the northern boundary of PIN#6840-02-77-5455; thence in a southerly direction along the eastern boundary of PIN#6840-02-77-7311; thence in a southerly direction along the eastern boundary of PIN#6840-02-76-7881 to the centerline intersection of Secondary Road #1720 (Spry Road); thence continuing on from the centerline intersection of Spry Road in a westerly direction along the northern boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-75-9770; thence in a southerly direction along the western boundary of PIN#6840-02-85-8453 to the northeast corner of PIN#6840-04-64-8862; thence in a westerly direction along the northern boundary of PIN#6840-04-64-8862 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southerly direction along the western boundary of PIN#6840-04-64-8862 and PIN#6840-04-64-6336 to the centerline intersection of Secondary Road # 1802 (Midway School Road); thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 16 parcels, (1) PIN#6840-04-64-2222, (2) PIN#6840-04-64-0223, (3)

PIN#6840-04-54-8188, (4) PIN#6840-04-54-7111, (5) PIN#6840-04-54-5038, (6) PIN#6840-04-54-2564, (7) PIN#6840-04-54-1150, (8) PIN#6840-03-44-8062, (9) PIN#6840-03-43-5929, (10) PIN#6840-03-43-4765, (11) PIN#6840-03-43-2782, (12) PIN#6840-03-43-1648, (13) PIN#6840-03-43-0622, (14) PIN#6840-03-33-9549, (15) PIN#6840-03-33-8556, (16) PIN# 6840-03-33-7552; thence in a westerly direction across Secondary Road # 1945 (Gardner Court); thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 10 parcels, (1) PIN#6840-03-33-4454, (2) PIN#6840-03-33-4454, (3) PIN#6840-03-33-3258, (4) PIN#6840-03-33-2244, (5) PIN#6840-03-33-1251, (6) PIN#6840-03-33-0473, (7) PIN#6840-03-23-9075, (8) PIN#6840-03-23-9018, (9) PIN#6840-03-23-7072, (10) PIN#6840-03-23-4099; thence in a westerly direction across PIN#6840-03-22-0626; thence in a westerly direction across Secondary Road # 18 03 (Ralph Craver Road); thence in a westerly direction across PIN#6840-03-22-0626; thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 7 parcels, (1) PIN#6840-03-13-8251, (2) PIN#6840-03-13-6851, (3) PIN#6840-03-13-5553, (4) PIN#6840-03-13-4662, (5) PIN#6840-03-13-6851, (6) PIN#6840-03-14-2040, (7) PIN#684003-14-1037 to the northeast corner of PIN#6840-03-03-6652; thence in a southerly, westerly, and northerly direction along the eastern, southern, and western boundary of PIN#6840-03-03-6652 to the southeast corner of PIN#6840-03-03-2805; thence in a westerly and northerly direction along the southern and western boundary of PIN#6840-03-03-2805 to the southeast corner of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-6968 to the centerline intersection of Secondary Road #2932 (Old US Hwy 52); thence continuing on from the centerline intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#6830-04-94-3101, (2) PIN#6830-04-94-2062, (3) PIN#6830-04-93-2940, (4) PIN#6830-04-93-2735, (5) PIN#6830-04-93-1645, (6) PIN#6830-04-93-1515, (7) PIN#6830-04-83-8240, (8) PIN#6830-04-82-8747, (9) PIN#6830-04-82-7695, (10) PIN#6830-04-82-7590; thence in a southerly direction across Secondary Road # 1523 (Ralph Miller Road); thence continuing on from the centerline intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of the following 12 parcels, (1) PIN#6830-04-81-0812, (2) PIN#6830-04-81-3918, (3) PIN#6830-04-72-6182, (4) PIN#6830-04-72-4305, (5) PIN#6830-04-72-0268, (6) PIN#6830-04-62-9264, (7) PIN#6830-04-62-8149, (8) PIN#6830-04-62-7149, (9) PIN#6830-04-62-6126, (10) PIN#6830-04-62-3192, (11) PIN#6830-04-62-0134, (12) PIN#6830-04-52-7075; thence in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-04-52-7075, (2) PIN#6830-04-52-8118, (3) PIN#6830-04-52-7267, (4) PIN#6830-04-52-7359, (5) PIN#6830-04-52-6499, (6) PIN#6830-04-52-6682; thence in a westerly direction across Secondary Road (Old Oak Court) to the southwest corner of PIN#6830-04-53-6120; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-04-53-6120, (2) PIN#6830-04-53-8234, (3) PIN#6830-04-53-7556, (4) PIN#6830-04-53-7813; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6830-04-53-9934, (2) PIN#6830-04-63-1833, (3) PIN#6830-04-63-4616; thence in an easterly and northerly direction along the northern and western boundary of PIN#6830-04-73-4213; thence in

an easterly direction along the northern boundary of PIN#6830-04-73-4213 and PIN#6830-04-74-6129 to the southeast corner of PIN#6830-04-74-2712; thence in a northerly, easterly, and westerly direction along the eastern and northern boundary of PIN#6830-04-74-2712 to the northeast corner of PIN#6830-02-65-9329; thence to the centerline intersection of Secondary Road # 15 06 (Eller Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-02-66-7211 and PIN#6830-02-66-1859; thence in a westerly direction across US Hwy 52; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-01-46-8112; thence in a westerly direction across Secondary Road #1507 (David Smith Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 6 parcels, (1) PIN#6830-01-45-3888, (2) PIN#6830-01-45-2913, (3) PIN#6830-01-45-1903, (4) PIN#6830-01-45-0914, (5) PIN#6830-01-35-9914, (6) PIN#6830-01-35-8916; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-03-34-1105; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 5 parcels, (1) PIN#6830-01-35-2729, (2) PIN#6830-01-35-0880, (3) PIN#6830-01-25-8894, (4) PIN#6830-01-26-6274, (5) PIN#6830-01-26-0321; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-01-16-7699; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-01-16-3314 and PIN#6830-01-16-2324; thence continuing on from the centerline intersection of Eller Road in a westerly direction across Secondary Road #3229 (Woodfield Drive); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6830-01-16-0327; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-01-16-0524, (2) PIN#6830-01-16-0634, (3) PIN#6830-01-16-0735, (4) PIN#6830-01-16-0835; thence in a northerly direction across Secondary Road #3230 (Woodwind Drive); thence in a northerly direction along the western boundary of the following 2 parcels, (1) PIN#6830-01-07-9199, (2) PIN#6830-01-17-0404; thence in a northerly direction across Secondary Road #3225 (Meadolee Lane); thence in a northerly direction along the western boundary of PIN#6830-01-17-0708; thence in a northerly and easterly direction along the western and northern boundary of PIN#6830-01-18-2180 to the southwest corner of PIN#6830-01-18-6453; thence in a northerly and easterly direction along the western and northern boundary of PIN#6830-01-18-6453 to the northwest corner of PIN#6830-01-18-8356; thence in an easterly direction along the northern boundary of the following 2 parcels, (1) PIN#6830-01-18-8356, (2) PIN#6830-01-18-9356; thence in an easterly direction across Secondary Road #3202 (Laurel Court); thence in an easterly direction along the northern boundary of the following 24 parcels, (1) PIN#6830-01-28-1306, (2) PIN#6830-01-28-2306, (3) PIN#6830-01-28-3314, (4) PIN#6830-01-28-4313, (5) PIN#6830-01-28-5313, (6) PIN#6830-01-28-6312, (7) PIN#6830-01-28-7312, (8) PIN#6830-01-28-8311, (9) PIN#6830-01-28-9311, (10) PIN#6830-01-38-0301, (11) PIN#6830-01-38-1310, (12) PIN#6830-01-38-2310, (13) PIN#6830-01-38-3219, (14) PIN#6830-01-38-4219, (15) PIN#6830-01-38-5219, (16) PIN#6830-01-38-6331, (17) PIN#6830-01-38-7380, (18) PIN#6830-01-38-9269, (19) PIN#6830-01-48-1227, (20) PIN#6830-01-48-2217, (21) PIN#6830-01-48-3217, (22) PIN#6830-01-48-4320, (23) PIN#6830-01-48-5320, (24) PIN#6830-01-48-6331; thence

to the centerline intersection of Secondary Road #1507 (David Smith Road); thence continuing on from the centerline Intersection of David Smith Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-01-48-83 87, (2) PIN#6830-02-58-1504, (3) PIN#6830-01-48-9824, (4) PIN#6830-01 -49-9027, (5) PIN#6830-01-49-9324, (6) PIN#6830-01-49-9028; thence in a northerly direction across Secondary Road #1583 (Pin Oak Drive); thence continuing on from the centerline intersection of David Smith Road in a northerly direction along the western boundary of the following 3 parcels, (1) PIN#6831-04-50-2112, (2) PIN#6831-04-50-2475, (3) PIN#6831-04-50-2762 to the centerline intersection of Secondary Road #1508 (Hickory Tree Road); thence continuing on from the centerline intersection of Hickory Tree Road m a Northwesterly direction along the northeast boundary of PIN#6831-03-40-8970; thence Continuing on from the centerline intersection of Hickory Tree Road to the centerline intersection of Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of the following 8 parcels, (1) PIN#6831-03-31-3765, (2) PIN#6831-03-21-9893, (3) PIN#6831-03-21-7878, (4) PIN#6831-03-21-6970, (5) PIN#6831-03-20-1695, (6) PIN#6831-03-21-0993, (7) PIN#6831-03-22-6885, (8) PIN#6831-03-11-8939; thence continuing on from the centerline intersection of Hartman Road in a southerly direction to the northeast corner of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7655; thence in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary of PIN#6831-03-11-7542 to the centerline intersection of Secondary Road (Midpines Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary of the following 3 parcels, (1) PIN#6831-03-11-5411, (2) PIN#6831-03-11-5300, (3) PIN#6831-03-11-4197; thence across Sinkland Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary of PIN#6831-0310-5913; thence in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6831-03-10-3983, (2). PIN#6831-03-10-2943, (3) PIN#6831-03-10-0993; thence in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6831-03-00-9915; thence across Sinkland Drive to the southeast comer of PIN#6831-03-01-6275; thence in a westerly direction along the southern boundary of PIN#6831-03-01-6275 to the centerline intersection of Secondary Road #1505 (Payne Road); thence continuing on from the centerline intersection of Payne Road in a northerly direction along the western boundary of the following 5 parcels, (1) PIN#6831-03-01-6275, (2) PIN#6831-03-01-7418, (3) PIN#6831-03-01-7614, (4) PIN#6831-03-01-7726, (5) PIN#6831-03-02-7030 to the centerline intersection of Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of PIN#6831-03-02-6411 to the centerline intersection of Secondary Road #15 10 (North Payne Road); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-03-02-6411, (2) PIN#6831-03-13-1651, (3) PIN#6831-03-03-6348, (4) PIN#6831-03-13-1651, (5) PIN#6831-03-04-8802, (6) PIN#6831-03-04-8901; thence across Secondary Road (Havenwood Drive); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of

the following 4 parcels, (1) PIN#6831-01-05-8017, (2) PIN#6831-01-05-8117, (3) PIN#6831-01-05-8227, (4) PIN#6831-01-05-8336; thence across Secondary Road (Cale Bradley Court); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-01-05-8541, (2) PIN#6831-01-05-8641, (3) PIN#6831-01-05-8741, (4) PIN#6831-01-05-8851, (5) PIN#6831-01-05-8951, (6) PIN#6831-01-06-8073; thence in an easterly direction along the northern boundary of PIN#6831-01-06-8073; thence across Secondary Road #1508 (Hickory Tree Road) to the southern corner of PIN#6831-01-06-9382; thence in a northerly direction along the eastern boundary of PIN#6831-01-06-9382; thence in a northerly and easterly direction along the southern and eastern boundary of PIN#6831-01-17-4633 to the southwest corner of PIN#6831-01-48-3804; thence in an easterly direction along the southern boundary of PIN#6831-01-48-3804 to the centerline intersection of US Hwy 52; thence continuing on from the centerline intersection of US Hwy 52 in a northerly direction along the western boundary of the following 7 parcels, (1) PIN#6831-01-48-3804, (2) PIN#6831-01-49-3076, (3) PIN#6831-01-38-1662, (4) PIN#6831-01-49-2319, (5) PIN#6831-01-49-1574, (6) PIN#6831-01-49-1626, (7) PIN#6831-01-49-0891 to the centerline intersection of Secondary Road #1509 (Follansbee Road), which is the beginning.

All references to the PIN # herein are references to Davidson county tax map system as of April 11, 2005. A copy shall be maintained in the records of the Town of Midway.

"Section 2.2. **Annexation.** (a) The Town of Midway shall not extend its boundaries into Forsyth County by annexation pursuant to Article 4A of Chapter 160A of the General Statutes.

(b) The Town of Midway shall not extend its boundaries into Davidson County by annexation to the west of Line B or to the north of Line C as shown on the map dated March 24, 2005, entitled "Proposed Midway Incorporation," as prepared by the City of Winston-Salem, unless the annexation is undertaken pursuant to an annexation agreement between the Town of Midway and the City of Winston-Salem.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Midway is the Mayor and Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2007 provided for by Section 4.1 of this Charter, Norman Wilkes is hereby appointed Mayor and Larry Jenkins, Betty Nifong, Steve Stokes, Barbara Temple, and Carl Tuttle are appointed Council Members of the Town of Midway, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial municipal election is held in 2007.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2007, the two candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2009, and quadrennially thereafter, three members shall be elected to four-year

terms. In 2011, and quadrennially thereafter, two members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2007, and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.3. **Town Clerk.** The Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Commencement of Tax Collection.** From and after the effective date of this act, the citizens and property in the Town of Midway shall be subject to municipal taxes levied for the year beginning July 1, 2006, and for that purpose the Town shall obtain from Davidson County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2006.

"Section 6.2. **Budget.** The Town may adopt a budget ordinance for fiscal year 2006-2007 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2006-2007, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. If the effective date of the incorporation is prior to July 1, 2006, the Town may adopt a budget ordinance for fiscal year 2005-2006 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem taxes may be levied for the 2005-2006 fiscal year.

"Section 6.3. **Ad Valorem Taxes.** The Town Council shall not increase the ad valorem tax rate more than \$0.10/\$100.00 valuation in each fiscal year without the vote or consent of a majority of the qualified voters of the Town of Midway. The election on the question of increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law on the date it was ratified.

S.B. 1598**Session Law 2006-38**

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO EVALUATE THE TRAINING AND QUALIFICATION REQUIREMENTS FOR ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS AND TO EXTEND THE PERIOD OF TIME THAT ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS MAY PROVIDE SERVICES RELATED TO THE DEVELOPMENT, IMPLEMENTATION, OR OPERATION OF AN ANIMAL WASTE MANAGEMENT PLAN OR ANIMAL WASTE MANAGEMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Section 12.7C of S.L. 2004-124 reads as rewritten:

"REQUIREMENTS FOR ANIMAL WASTE MANAGEMENT SYSTEMS TECHNICAL SPECIALISTS

SECTION 12.7C. Before ~~July 1, 2006,~~ 1 September 2007, the requirements and qualifications for animal waste management systems technical specialists shall not be changed and the scope of the work that animal waste management systems technical specialists are authorized to perform shall not be decreased. As used in this section, "animal waste management system" has the same meaning as in G.S. 143-215.10B."

SECTION 2. The Department of Environment and Natural Resources shall evaluate the training and qualification requirements for approval as an animal waste management systems technical specialist pursuant to G.S. 139-4(d)(11) to determine whether the current approval process ensures an appropriate level of knowledge and expertise to provide services related to the development, implementation, or operation of an animal waste management plan or animal waste management system. In conducting the study, the Department shall obtain input from representatives of interested parties, including the North Carolina Soil and Water Conservation Commission, the Department of Agriculture and Consumer Services, the Professional Engineers of North Carolina, Inc., the Natural Resources Conservation Service of the United States Department of Agriculture, the North Carolina Farm Bureau Federation, and other organizations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 November 2006.

SECTION 3. This act becomes effective 1 July 2006.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 7:23 p.m. on the 29th day of June, 2006.

H.B. 126**Session Law 2006-39**

AN ACT TO MAKE TIME-SENSITIVE TECHNICAL CORRECTIONS TO AMEND THE HANDGUN AND CONCEALED CARRY PERMIT STATUTES AND TO AMEND THE OSHA CIVIL PENALTIES STATUTE TO CLARIFY THE DISTINCTION BETWEEN SERIOUS AND NONSERIOUS VIOLATIONS MADE AMBIGUOUS IN 2004.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-404(a)(1) reads as rewritten:

"(a) Upon application, the sheriff shall issue the license or permit to a resident of that ~~county~~ county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a ~~nonresident~~ nonresident, when the sheriff has done all of the following:

- (1) ~~Verified~~ Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.
- (2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.
- (3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting."

SECTION 2. G.S. 14-415.13(b) reads as rewritten:

"(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The sheriff shall determine the criminal and background history of an applicant also by conducting a check through the National Instant Criminal Background Check System (NICS). The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19."

SECTION 3. G.S. 95-138(a) reads as rewritten:

"(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, ~~may~~ shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order ~~promulgated pursuant to adopted under~~ this Article, as follows:

- (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty of seventy thousand dollars (\$70,000) may be assessed for each willful or repeat violation.
- (2) A ~~maximum~~ penalty of up to seven thousand dollars (\$7,000) shall be assessed for each ~~nonserious or~~ serious violation.
- (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each violation that is adjudged not to be of a serious nature.
- (3) A ~~maximum~~ penalty of up to seven thousand dollars (\$7,000) may be assessed for each day that against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in

this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.

- (4) A ~~maximum~~ penalty of up to seven thousand dollars (\$7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article."

SECTION 4. This act becomes effective June 30, 2006.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 7:25 p.m. on the 29th day of June, 2006.

H.B. 474

Session Law 2006-40

AN ACT TO PROVIDE A TAX CREDIT FOR REVITALIZATION OF HISTORIC MILL FACILITIES AND TO PROVIDE AN ENHANCED HISTORIC REHABILITATION CREDIT FOR REHABILITATION EXPENSES WITH RESPECT TO A FACILITY THAT WAS ONCE A STATE-OWNED TRAINING SCHOOL FOR JUVENILE OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3H.

"Mill Rehabilitation Tax Credit.

"§ 105-129.70. Definitions.

The following definitions apply in this Article:

- (1) Certified historic structure. – Defined in section 47 of the Code.
- (2) Certified rehabilitation. – Defined in G.S. 105-129.36.
- (3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.
- (4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.
- (5) Eligible site. – A site located in this State that satisfies all of the following conditions:
 - a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.
 - b. It is a certified historic structure or a State-certified historic structure.
 - c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
 - d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a

site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars (\$3,000,000) for the site as a whole.

- (6) Enterprise tier area. – Defined in G.S. 105-129.3.
- (7) Pass-through entity. – Defined in G.S. 105-228.90.
- (8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
- (10) State-certified historic structure. – Defined in G.S. 105-129.36.
- (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36.

"§ 105-129.71. Credit for income-producing rehabilitated mill property.

(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

- (1) For an eligible site located in an enterprise tier one, two, or three area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.
- (2) For an eligible site located in an enterprise tier four or five area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures.

(b) Allocation. – 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 may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture

percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"§ 105-129.72. Credit for nonincome-producing rehabilitated mill property.

(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in an enterprise tier one, two, or three area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in an enterprise tier four or five area.

(b) Allocation. – 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 may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the eligible site is placed in service, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the eligible site is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the eligible site was placed in service, the owner forfeits a portion of the credit.

The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allocable credit is allocated equally among the five years in which the credit is claimed.

(d) Exceptions to Forfeiture. – Forfeiture as provided in subsection (c) of this section is not required if the change in ownership is the result of any of the following:

- (1) The death of the owner.
- (2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(e) Liability from Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"§ 105-129.73. Tax credited; cap.

(a) Taxes Credited. – The credits allowed by this Article may be claimed against the franchise tax imposed under Article 3 of this Chapter, the income taxes imposed under Article 4 of this Chapter, or the gross premiums tax imposed under Article 8B of this Chapter. The taxpayer may take the credits allowed by this Article against only one of the taxes against which it is allowed. The taxpayer must elect the tax against which a credit will be claimed when filing the return on which it is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – A credit allowed under this Article may not exceed the amount of the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding nine years.

"§ 105-129.74. Coordination with Article 3D of this Chapter.

A taxpayer that claims a credit under this Article may not also claim a credit under Article 3D of this Chapter with respect to the same activity. The rules and fee schedule adopted under G.S. 105-129.36A apply to this Article.

"§ 105-129.75. Sunset.

This Article expires for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2011."

SECTION 2. G.S. 105-129.35(a) reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit equal to twenty percent (20%) of the expenditures that qualify for the federal credit. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer

verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 3. G.S. 105-129.36(a) reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a State-certified historic structure located in this State is allowed a credit equal to thirty percent (30%) of the rehabilitation expenses. If the certified historic structure is a facility that at one time served as a State training school for juvenile offenders, the amount of the credit is equal to forty percent (40%) of the expenditures that qualify for the federal credit. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars (\$25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must provide a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection."

SECTION 4. G.S. 105-129.36(b)(1) reads as rewritten:

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

- (1) Certified rehabilitation. – Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer ~~prior to the commencement of the work.~~Officer."

SECTION 5. This act is effective for taxable years beginning on or after January 1, 2006, and applies to eligible sites placed into service on or after July 1, 2006.

In the General Assembly read three times and ratified this the 28th day of June, 2006.

Became law upon approval of the Governor at 7:33 p.m. on the 29th day of June, 2006.

H.B. 1343

Session Law 2006-41

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO EXTEND THE PERIOD IN WHICH A PERSON MAY RENEW AN INTERN PERMIT UNDER THE LAWS REGULATING THE PRACTICE OF DENTISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-29.4(1) reads as rewritten:

"The North Carolina State Board of Dental Examiners may, in the exercise of the discretion of said Board, issue to a person who is not licensed to practice dentistry in this State and who is a graduate of a dental school, college, or institution approved by said Board, an intern permit authorizing such person to practice dentistry under the supervision or direction of a dentist duly licensed to practice in this State, subject to the following particular conditions:

- (1) An intern permit shall be valid for no more than one year from the date ~~of issue thereof; provided, however, that the~~the permit was issued. The Board may, in its discretion, renew ~~such the permit for not more than five additional one-year periods; and, provided, further, that~~periods. However, no person who has attempted and failed a Board-approved written or clinical examination shall be granted an intern permit or

intern permits embracing or covering an aggregate time span of more than 72 calendar ~~months;~~months. An intern permit holder who has held an unrestricted dental license in a Board-approved state or jurisdiction for the five years immediately preceding the issuance of an intern permit in this State may, in the Board's discretion, have the intern permit renewed for additional one-year periods beyond 72 months if the intern permit holder's approved employing institution comes before the Board on the permit holder's behalf for each subsequent annual renewal;

...."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 7:38 p.m. on the 29th day of June, 2006.

S.B. 1311

Session Law 2006-42

AN ACT TO PROHIBIT THE POSSESSION OR CONSUMPTION OF ALCOHOL ON RIVERS IN POLK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to possess or consume any alcoholic beverage on the waters of any river in Polk County or within 50 feet of the banks of any river in Polk County.

SECTION 2. This act does not apply to the actions of a landowner, the landowner's lessee, or the landowner's or lessee's guests on the landowner's property, if that property is adjacent to a river, and does not apply to that portion of the Green River that has been impounded to form Lake Adger.

SECTION 3. Violation of this act is a Class 3 misdemeanor punishable by a fine of not less than fifty dollars (\$50.00).

SECTION 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

SECTION 5. This act applies only to Polk County.

SECTION 6. This act becomes effective August 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

S.B. 1774

Session Law 2006-43

AN ACT TO ESTABLISH PUBLIC SAFETY AND PROOF OF FARE PAYMENT OFFENSES FOR RAPID TRANSIT SERVICES WITHIN THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7 of the Charter of the City of Charlotte, being S.L. 2000-26, as amended, is amended by adding the following new Article to read:

"ARTICLE VIII. RAPID TRANSIT SERVICES.

"Section 7.110. **Public Safety Offenses.** In addition to any other applicable laws or ordinances, G.S. 14-278, 14-279, 14-279.1, 14-280, 14-280.1, and 14-281 shall apply to rapid transit services within the City of Charlotte, including busways, commuter rail systems, light rail systems, and streetcar systems.

"Section 7.111. **Proof of Fare Payment.** In addition to any other applicable laws or ordinances, it shall be unlawful for any person to fail to provide proof of fare payment while upon rapid transit services within the City of Charlotte, including busways, commuter rail systems, light rail systems, and streetcar systems, when proof is requested by an authorized employee of the City, an authorized agent of the City, or a peace officer. Any person convicted of violating this section shall be guilty of a Class 3 misdemeanor. An authorized employee of the City, authorized agent of the City, or peace officer who detains or causes the arrest of a person who fails to provide proof of fare payment upon request shall not be held civilly liable for the detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested if the detention or arrest is: (i) upon a rapid transit vehicle or in reasonable proximity of a rapid transit station; (ii) conducted in a reasonable manner for a reasonable length of time; and (iii) based upon probable cause that the person committed the offense alleged. If the person being detained or arrested is a minor under the age of 18, the authorized employee, authorized agent, or peace officer shall call or notify, or make a reasonable effort to call or notify, the parent or guardian of the minor during the period of detention or arrest. An authorized employee of the City, authorized agent of the City, or peace officer who makes a reasonable effort to call or notify the parent or guardian of a minor child under this section shall not be held civilly liable for the failure to call or notify the parent or guardian."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 1881

Session Law 2006-44

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE TOWN OF PINK HILL.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Pink Hill:

The property of Jeffery B. Turner and wife, Linda H. Turner, being further described as: Lot No. 1 as shown upon the map entitled "Survey For Whitford Hill, Pink Hill Township, Lenoir County, North Carolina," which said map appears of record in Cabinet 2, Slide 84, Page 168, Lenoir County Registry. Deed dated October 15, 1984, recorded in Book 813, page 645, Lenoir County Registry.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 1901

Session Law 2006-45

AN ACT TO ALLOW THE IREDELL-STATESVILLE SCHOOLS TO CONVEY CERTAIN PROPERTY TO A NONPROFIT CORPORATION TO ALLOW FOR ESTABLISHMENT OF THE BOYS AND GIRLS CLUB OF THE PIEDMONT ON THE SITE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 115C-518 and Article 12 of Chapter 160A of the General Statutes, the Iredell-Statesville Schools may convey to a nonprofit corporation at private sale, with or without monetary consideration, any or all of its right, title, or interest in the following described property for use of the property as the site for a boys and girls club:

"Being all of Lot Number 15 of the Statesville Redevelopment Commission property known as NCR-136, Section 1, as the same is platted, planned, and recorded in Plat Book 15, at page 97, Iredell County Registry, it being the property conveyed to the Statesville City Board of Education by deed recorded at Book 662, page 514, Iredell County Registry."

SECTION 1.1. If title to the property described in Section 1 of this act is sold or otherwise transferred after being used as a site for a boys and girls club, the property shall first be offered to a non-profit organization.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 1913

Session Law 2006-46

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF RED CROSS.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Red Cross:

TRACT I (Tax record number 36975):

Beginning at the northwest corner of the property having tax record number 36975, thence in a northeasterly direction (N 43' 03' 56" E) along the northwestern boundary of the above said property for a distance of 1,797 feet to the northeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southeasterly direction with the centerline of Hilltop Road to the southeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southwesterly direction (S 55' 31' 50" W) along the southeastern boundary of the above said property for a distance of 1,653 feet to the southwestern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a

distance of 200 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

TRACT II (Tax record number 5819):

Beginning at the northwest corner of the property having tax record number 5819, thence in a northeasterly direction (N 55' 31' 50" E) along the northwestern boundary of the above said property for a distance of 1,653 feet to a point, said point is the intersect of the northwestern property line of the above said property and the centerline of Hilltop Road, thence in a southeasterly direction for a distance of 337 feet and along the centerline of Hilltop Road to a point, said point is the intersect of the southeastern boundary of the above said property and the centerline of Hilltop Road, thence in a southwesterly direction (S 54' 22' 00" W) along the southeastern boundary of the above said property to the southeastern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a distance of 357 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

SECTION 2. The property described in Section 1 of this act shall revert to the zoning designation established by Stanly County prior to its annexation by the Town of Red Cross, and shall continue under the planning and zoning jurisdiction of Stanly County.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 1992

Session Law 2006-47

AN ACT ADDING CERTAIN DESCRIBED PROPERTIES TO THE CORPORATE BOUNDARIES OF THE TOWN OF SHALLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described properties are added to the corporate boundaries of the Town of Shallotte:

RIVERS EDGE GOLF CLUB AND PLANTATION PARCEL A

'Beginning at an iron rod in the West R/W of Copas Road located North 20 degrees 32 minutes 38 seconds West a distance of 624.67 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 70 degrees 38 minutes 45 seconds West for a distance of 468.68 feet to an iron rod, thence South 63 degrees 12 minutes 37 seconds West for a distance of 50.85 feet to an iron rod, thence South 66 degrees 17 minutes 49 seconds West for a distance of 188.30 feet to an iron rod, thence North 66 degrees 41 minutes 17 seconds West for a distance of 77.31 feet to an iron rod, thence South 71 degrees 11 minutes 37 seconds West for a distance of 45.45 feet to an iron rod, thence South 55 degrees 45 minutes 25 seconds West for a distance of 744.40 feet, to an iron rod, thence South 51 degrees 29 minutes 26 seconds West for a distance of 185.14 feet to an iron rod, thence South 56 degrees 27 minutes 00 seconds West for a distance of 241.03 feet to an iron rod, thence North 39 degrees 20 minutes 38 seconds West for a distance of 139.09 feet to an iron rod, thence North 57 degrees 22 minutes 08 seconds West for a distance of 52.73 feet to

an iron rod, thence North 53 degrees 36 minutes 58 seconds West for a distance of 155.89 feet to an iron rod, thence North 36 degrees 31 minutes 03 seconds West for a distance of 346.31 feet to an iron rod, thence North 69 degrees 19 minutes 12 seconds East for a distance of 191.50 feet to an iron rod, thence North 69 degrees 21 minutes 44 seconds East for a distance of 499.95 feet to an iron rod, thence North 69 degrees 21 minutes 35 seconds East for a distance of 499.53 feet to an iron rod, thence North 69 degrees 26 minutes 17 seconds East for a distance of 336.27 feet to an iron rod, thence North 69 degrees 27 minutes 11 seconds East for a distance of 406.65 feet to an iron rod, thence South 21 degrees 51 minutes 24 seconds East for a distance of 200.09 feet to an iron rod, thence North 69 degrees 25 minutes 00 seconds East for a distance of 250.54 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 23 degrees 28 minutes 26 seconds East for a distance of 201.23 feet to the place and point of beginning, containing 21.0 acres, more or less.'

**RIVERS EDGE GOLF CLUB AND PLANTATION
PARCEL B**

'Beginning at an iron rod in the West R/W of Copas Road located North 24 degrees 26 minutes 18 seconds West a distance of 189.47 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 75 degrees 38 minutes 54 seconds West for a distance of 136.41 feet to an iron rod, thence South 63 degrees 22 minutes 21 seconds West for a distance of 440.00 feet to an iron rod, thence South 57 degrees 52 minutes 21 seconds West for a distance of 195.21 feet to an iron rod, thence South 56 degrees 19 minutes 56 seconds West for a distance of 101.35 feet to an iron rod, thence South 54 degrees 25 minutes 49 seconds West for a distance of 150.65 feet to an iron rod, thence South 45 degrees 37 minutes 06 seconds West for a distance of 121.53 feet to an iron rod, thence South 58 degrees 46 minutes 59 seconds West for a distance of 114.92 feet to an iron rod, thence South 58 degrees 30 minutes 22 seconds West for a distance of 23.83 feet to an iron rod, thence North 56 degrees 55 minutes 27 seconds West for a distance of 284.86 feet to an iron rod, thence North 44 degrees 10 minutes 16 seconds East for a distance of 773.53 feet to an iron rod, thence North 09 degrees 55 minutes 10 seconds East for a distance of 66.77 feet to an iron rod, thence North 66 degrees 10 minutes 41 seconds East for a distance of 186.95 feet to an iron rod, thence North 63 degrees 02 minutes 45 seconds East for a distance of 49.29 feet to an iron rod, thence North 70 degrees 38 minutes 45 seconds East for a distance of 307.01 feet to an iron rod, thence North 70 degrees 34 minutes 11 seconds East for a distance of 161.77 feet to an iron rod in the west R/W of Copas Road, thence with said R/W South 28 degrees 29 minutes 54 seconds East for a distance of 8.70 feet to an iron rod, thence South 22 degrees 18 minutes 39 seconds East for a distance of 98.04 feet to an iron rod, thence leaving said R/W South 68 degrees 37 minutes 37 seconds West for a distance of 160.19 feet to an iron rod, thence South 20 degrees 05 minutes 11 seconds East for a distance of 90 feet to an iron rod, thence North 68 degrees 39 minutes 21 seconds East for a distance of 160.18 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 17 degrees 03 minutes 16 seconds East for a distance of 90.97 feet to an iron rod, thence South 15 degrees 51 minutes 24 seconds East for a distance of 128.79 feet to the place and point of beginning, containing 11.96 acres, more or less.'

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2040**Session Law 2006-48**

AN ACT TO ALLOW THE PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE TO USE COMMISSION LABOR FOR THE CONSTRUCTION OF WATER AND SEWER UTILITY PROJECTS IN THE PHASE V ANNEXED AREAS OF THE CITY AND UNDER CERTAIN CIRCUMSTANCES AND WITHOUT REGARD TO THE DOLLAR VALUE OF THE LABOR.

The General Assembly of North Carolina enacts:

SECTION 1. The Public Works Commission of the City of Fayetteville may use force account qualified labor on the Commission's payroll for the design, construction, repair, and renovation of the following projects without regard to the dollar limitations contained in G.S. 143-135:

- (1) Water lines and related facilities to serve the Phase V annexed areas of the City of Fayetteville, to be built in phases.
- (2) Sewer lines and related facilities to serve the Phase V annexed areas of the City of Fayetteville, to be built in phases.

SECTION 2. The Commission may utilize its authority under Section 1 of this act for a particular project only if it has first: (i) complied with all the requirements of Article 8 of Chapter 143 of the General Statutes regarding the advertisement and bidding for public contracts; and (ii) received fewer than three bids.

SECTION 3. This act only applies to the Public Works Commission of the City of Fayetteville.

SECTION 4. This act is effective when it becomes law and expires January 1, 2012.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2324**Session Law 2006-49**

AN ACT TO AMEND THE CHARTER OF THE TOWN OF CHAPEL HILL TO REPEAL TERM LIMITS FOR THE OFFICE OF MAYOR.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2.1 of the Charter of the Town of Chapel Hill, being Chapter 473 of the 1975 Session Laws, as rewritten by Section 6 of Chapter 911 of the 1981 Session laws, reads as rewritten:

"(c) The mayor shall be elected at biennial elections for a term of two years subject to the provisions of Section 2.3 of this Charter. ~~No person shall be eligible to be elected to mayor for more than four successive two-year terms.~~"

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2343**Session Law 2006-50****AN ACT TO EXEMPT STOKES COUNTY FROM CERTAIN REQUIREMENTS FOR PUBLIC CONTRACTS.**

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-128, 143-129, and 143-132, Stokes County may use the design-build method of construction for an emergency medical services station to be located in the Pinnacle area of the County. Notwithstanding any provision of law, Stokes County may award a contract under this section in its sole discretion.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2524**Session Law 2006-51****AN ACT EXPANDING THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE TOWN OF CHOCOWINITY.**

The General Assembly of North Carolina enacts:

SECTION 1.(a) In addition to any areas where the Town of Chocowinity exercises extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the Town shall have extraterritorial jurisdiction under that Article in the area described in subsection (b) of this section.

SECTION 1.(b) Description (+/-277.74 ac, Hwy 17, Chocowinity Tws, #12-003254):

Being that certain lot or parcel of land situated in Chocowinity Township, Beaufort County, North Carolina which is more particularly described as follows:

Being the von Eberstein Home Farm, known as "Elmwood", situated on both sides of US Hwy. 17 and also on both sides of the Norfolk-Southern Railroad right-of-way, originally containing 302.5 acres as depicted by the Referenced Worthington Map of Survey.

LESS AND EXCEPTING the following parcels:

---The 4.60 acre parcel conveyed to Roy Tuten by Deed recorded 01/10/1956 in Book 459, Page 292, now Tax Parcel ID #12-002494.

---The 1.00 acre parcel conveyed to David Rowe by Deed recorded 01/21/1956 in Book 460, Page 44, now Tax Parcel ID #12-000023.

---The 0.75 acre parcel conveyed to J.O. Branch by Deed recorded 07/22/1960 in Book 511, Page 183 and by Correction Deed recorded 08/17/1960 in Book 512, Page 69, now Tax Parcel ID #12-002308.

---The 0.50 acre parcel conveyed to Leslie Godley by Deed recorded 08/05/1960 in Book 511, Page 516, now Tax Parcel ID #12-002576.

---The 0.84 acre parcel conveyed to Erma Lee Cook by Deed recorded 08/05/1960 in Book 511, Page 524, now Tax Parcel ID #12-021360.

---The parcel conveyed to A.E. Chandler by Deed recorded 08/08/1960 in Book 511, Page 551 and by Correction Deed recorded 08/17/1960 in Book 512, Page 69, now Tax Parcel ID #12-002671.

- The parcel conveyed to Albert Sutton by Deed recorded 09/22/1960 in Book 513, Page 252, now Tax Parcel ID #12-013129.
- The 1.16 acre parcel conveyed to J.T. Chandler by Deed recorded 09/22/1960 in Book 513, Page 256, now Tax Parcel ID #12-005268.
- The parcel conveyed to William Hodges by Deed recorded 10/06/1960 in Book 513, Page 639, now Tax Parcel ID #12-015763.
- The 1.15 acre parcel conveyed to Glen T. Clark by Deed recorded 10/20/1960 in Book 514, Page 296, now Tax Parcel ID #12-010743.
- The parcel conveyed to Glen T. Clark by Deed recorded 05/22/1961 in Book 521, Page 530, now part of Tax Parcel ID #12-010743.
- The 1.12 acre parcel conveyed to J. B. Wall by Deed recorded 11/01/1961 in Book 527, Page 111, now Tax Parcel ID #12-015266.
- The 0.03 acre parcel conveyed to Eastern North Carolina Natural Gas Company by Deed recorded 06/29/2004 in Book 1402, Page 155, now Tax Parcel ID #15-021048.
- The approximately 0.75, more or less, acre parcel conveyed to D & B Land Group by Deed recorded in Book 1422, Page 707, now Tax Parcel ID #12-032960.

This tract now contains approximately 277.74 acres, more or less, designated as Beaufort County Tax Parcel #12-003254, all in accordance to that Deed recorded in Book 1240, Page 915 of the Beaufort County Registry, that Map recorded in Plat. Cab. A, Slide 84 of the Beaufort County Registry and that Estate recorded in File 69 E 87 of the Pitt County Clerk of Court.

Referenced Map of Survey:

Reference should be made to that Map of Survey by M. M. Worthington, entitled "Map Showing Property of F. H. von Eberstein", dated 03/01/1918 and recorded 09/17/1976 in Plat Cab. A, Slide 84 of the Beaufort County Registry. This Map of Survey is incorporated herein for a more complete and accurate description. Further reference may be made to those Maps of Survey by W. B. Duke, entitled "Plan of Lots Surveyed for W. H. von Eberstein", recorded in Map Book 14 at Pages 49, 59, 60 and 62.

SECTION 2. This act applies to the Town of Chocowinity only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2351

Session Law 2006-52

A BILL TO BE ENTITLED

AN ACT TO MAKE CONTINUING APPROPRIATIONS AND EXTEND CERTAIN BUDGET PROVISIONS UNTIL JULY 7, 2006, AT 11:30 P.M.

The General Assembly of North Carolina enacts:

BUDGET CONTINUATION

SECTION 1. The Director of the Budget may continue to allot funds for expenditure by State departments, institutions, and agencies at a level not to exceed the level of recurring expenditures authorized for the 2006-2007 fiscal year in S.L. 2005-276, as amended.

The Director of the Budget shall not allocate funds for any of the purposes set out in the budget reductions contained in Senate Bill 1741, third edition, and Senate Bill 1741, sixth edition, that are not in controversy.

Vacant positions subject to the proposed budget reductions in either Senate Bill 1741, third edition, or Senate Bill 1741, sixth edition, shall not be filled.

To the extent necessary to implement this authorization, there is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 2006-2007 fiscal year funds necessary to carry out this section.

The appropriations and the authorizations to allocate and spend funds which are set out in this section shall remain in effect until the Current Operations and Capital Improvements Appropriations Act of 2006 becomes law, at which time that act shall become effective and shall govern appropriations and expenditures. When the Current Operations and Capital Improvements Appropriations Act of 2006 becomes law, the Director of the Budget shall adjust allotments to give effect to that act from July 1, 2006.

Except as otherwise provided by this act, the limitations and directions for the 2005-2006 fiscal year set out in S.L. 2005-276, as amended, shall remain in effect. Session laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

NO AUTOMATIC STEP INCREASE FOR STATE AND PUBLIC SCHOOL EMPLOYEES

SECTION 2. State employees subject to G.S. 7A-102(c), 7A-171.1, or 20-187.3 shall not move up on salary schedules or receive automatic increases, including automatic step increases, until authorized by the General Assembly.

Public school employees paid on the teacher salary schedule or the school-based administrator salary schedule shall not move up on salary schedules or receive automatic step increases until authorized by the General Assembly.

FUNDS SHALL NOT REVERT

SECTION 3.(a) If the provisions of either Senate Bill 1741, third edition, or Senate Bill 1741, sixth edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 2006. Unless these funds are encumbered on or before June 30, 2006, these funds shall not be expended after June 30, 2006, except as provided by a law enacted after June 30, 2006.

SECTION 3.(b) This section becomes effective June 30, 2006.

STATE CONTROLLER SHALL NOT TRANSFER FUNDS ON JUNE 30

SECTION 4.(a) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, for the 2005-2006 fiscal year only, funds shall not be reserved to the Repairs and Renovations Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2006.

SECTION 4.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3, for the 2005-2006 fiscal year only, funds shall not be reserved to the Savings Reserve Account, and the State Controller shall not transfer funds from the unreserved credit balance to the Savings Reserve Account on June 30, 2006.

SECTION 4.(c) This section becomes effective June 30, 2006.

DHHS BLOCK GRANTS

SECTION 5.1.(a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2007, according to the following schedule:

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

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance (Cash Assistance)	\$102,625,680
02.	Work First County Block Grants	94,653,315
03.	County Demonstration Grants	19,048,322
04.	Child Protective Services – Child Welfare Workers for Local DSS	12,452,391
05.	Work First – Boys and Girls Clubs	1,500,000
06.	Work First – After-School Services for At-Risk Children	2,249,642
07.	Work First – After-School Programs for At-Risk Youth in Middle Schools	500,000
08.	Work First – Work Central	550,000
09.	Adoption Services – Special Children's Adoption Fund	3,000,000
10.	Family Violence Prevention	2,200,000
11.	Foster Care	2,000,000

Division of Child Development

12.	Subsidized Child Care Program	48,563,266

DHHS Administration

13.	Division of Social Services	586,931
14.	Office of the Secretary	65,836
15.	Office of the Secretary/DIRM – TANF Automation Projects	592,500

16.	Office of the Secretary/DIRM – NC FAST Implementation	1,800,000
Transfers to Other Block Grants		
Division of Child Development		
17.	Transfer to the Child Care and Development Fund	81,292,880
Division of Social Services		
18.	Transfer to Social Services Block Grant for Department of Juvenile Justice and Delinquency Prevention – Support Our Students	2,749,642
19.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	2,550,000
20.	Transfer to Social Services Block Grant for Maternity Homes	838,000
21.	Transfer to Social Services Block Grant for Teen Pregnancy Prevention Initiatives	2,500,000
22.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
23.	Transfer to Social Services Block Grant for Foster Care Services	1,181,907
TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT		\$388,000,312
SOCIAL SERVICES BLOCK GRANT		
Local Program Expenditures		
Divisions of Social Services and Aging and Adult Services		
01.	County Departments of Social Services (Transfer from TANF – \$4,500,000)	\$ 28,868,189
02.	State In-Home Services Fund	2,101,113
03.	State Adult Day Care Fund	2,155,301

04.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	238,321
05.	Foster Care Services (Transfer from TANF – \$1,181,907)	1,706,063
06.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	2,550,000
07.	Maternity Homes (Transfer from TANF)	838,000
08.	Local DSS Services for Hurricane Victims	509,272
Division of Aging and Adult Services		
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
10.	Mental Health Services Program	422,003
11.	Developmental Disabilities Services Program	5,000,000
12.	Mental Health Services-Adult/Mental Health Services-Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
Division of Child Development		
13.	Subsidized Child Care Program	3,150,000
Division of Vocational Rehabilitation		
14.	Vocational Rehabilitation Services – Easter Seal Society/UCP	188,263
Office of the Secretary – Office of Economic Opportunity		
15.	Elderly Supplemental Grant Program	41,302
Division of Public Health		
16.	Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000

DHHS Program Expenditures

Division of Aging and Adult Services

17.	UNC-CARES Training Contract	247,920

Division of Services for the Blind

18.	Independent Living Program	3,314,114

Division of Facility Services

19.	Adult Care Licensure Program	411,897

20.	Mental Health Licensure and Certification Program	205,668

DHHS Administration

21.	Division of Aging and Adult Services	630,636

22.	Division of Social Services	869,058

23.	Office of the Secretary/Controller's Office	123,059

24.	Office of the Secretary/DIRM	82,009

25.	Division of Child Development	15,000

26.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	18,098

27.	Division of Facility Services	62,986

28.	Office of the Secretary-NC Inter-Agency Council For Coordinating Homeless Programs	250,000

29.	Office of the Secretary-Housing Coalition	100,000

Transfers to Other State Agencies

Department of Administration

30.	NC Commission of Indian Affairs In-Home Services for the Elderly	203,198

Department of Juvenile Justice and Delinquency Prevention

31.	Support Our Students (Transfer from TANF)	2,749,642

Transfers to Other Block Grants

Division of Public Health

32.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819

TOTAL SOCIAL SERVICES BLOCK GRANT	\$ 64,765,609

LOW-INCOME ENERGY BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Low-Income Energy Assistance Program (LIHEAP)	\$ 28,684,494
02.	Crisis Intervention Program (CIP)	20,831,114

Office of the Secretary – Office of Economic Opportunity

03.	Weatherization Program	9,431,545
04.	Heating Air Repair & Replacement Program (HARRP)	4,399,042

Local Administration

Division of Social Services

05.	County DSS Administration	2,057,992

Office of the Secretary – Office of Economic Opportunity

06.	Local Residential Energy Efficiency Service Providers – Weatherization	257,185
07.	Local Residential Energy Efficiency Service Providers – HARRP	119,955

DHHS Administration

08.	Division of Social Services	319,774
09.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	7,146
10.	Office of the Secretary/DIRM	245,395
11.	Office of the Secretary/Controller's Office	11,211

12.	Office of the Secretary/Office of Economic Opportunity – Weatherization	257,185
13.	Office of the Secretary/Office of Economic Opportunity – HARRP	119,955
Transfers to Other State Agencies		
14.	Department of Administration – N.C. State Commission of Indian Affairs	58,455
TOTAL LOW-INCOME ENERGY BLOCK GRANT		\$ 66,800,448
CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		
Local Program Expenditures		
Division of Child Development		
01.	Subsidized Child Care Services	\$165,102,685
02.	Subsidized Child Care Services (TANF to CCDF)	81,292,880
DHHS Program Expenditures		
Division of Child Development		
03.	Quality and Availability Initiatives	34,951,707
Local Administrations		
Division of Child Development		
04.	Administrative Expenses (Nondirect Subsidy Services Support)	1,849,000
DHHS Administration		
05.	DCD Administrative Expenses	6,028,354
TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT		\$289,224,626
MENTAL HEALTH SERVICES BLOCK GRANT		
Local Program Expenditures		
01.	Mental Health Services – Adult	\$ 7,184,481

02.	Mental Health Services – Child	3,921,991
03.	Comprehensive Treatment Service Program	1,500,000
Local Administration		
04.	Division of Mental Health	100,000
TOTAL MENTAL HEALTH SERVICES BLOCK GRANT		\$ 12,706,472
SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		
Local Program Expenditures		
01.	Substance Abuse Services – Adult	\$ 20,537,390
02.	Substance Abuse Treatment Alternative for Women	8,069,524
03.	Substance Abuse – HIV and IV Drug	4,816,378
04.	Substance Abuse Prevention – Child	5,835,701
05.	Substance Abuse Services – Child	4,940,500
06.	Substance Abuse Strengthening Families – Prevention	851,156
Division of Public Health		
07.	Risk Reduction Projects	383,980
08.	Aid-to-Counties	209,576
09.	Maternal Health	37,779
DHHS Administration		
10.	Division of Mental Health	500,000
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		\$ 46,181,984
MATERNAL AND CHILD HEALTH BLOCK GRANT		

Local Program Expenditures

Division of Public Health

01.	Healthy Mothers/Healthy Children	9,359,236
02.	Children's Health Services	4,114,216
03.	Healthy Beginnings	404,559
04.	Maternal Health	397,761
05.	Teen Pregnancy Prevention Initiatives	85,710

DHHS Program Expenditures

Division of Public Health

06.	Children's Health Services	3,149,826
07.	Maternal Health	185,488
08.	State Center for Health Statistics	29,432
09.	Local Technical Assistance & Training	47,424
10.	Injury and Violence Prevention	149,438
11.	Office of Minority Health	98,236
12.	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)	22,856
13.	Immunization Program – Vaccine Distribution	414,175

DHHS Administration

14.	Division of Public Health Administration	550,681

TOTAL MATERNAL AND CHILD HEALTH BLOCK GRANT	\$ 19,009,038

PREVENTIVE HEALTH SERVICES BLOCK GRANT

Local Program Expenditures

01.	NC Statewide Health Promotion	\$1,755,653
02.	Services to Rape Victims	197,112

03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819
DHHS Program Expenditures		
04.	NC Statewide Health Promotion	431,444
05.	Oral Health	114,251
06.	Osteoporosis Program	67,593
DHHS Administration		
07.	Division of Public Health	109,211
TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT		\$2,821,083
COMMUNITY SERVICES BLOCK GRANT		
Local Program Expenditures		
Office of Economic Opportunity – Community Services Block Grant		
01.	Community Action Agencies	\$ 15,071,666
02.	Limited Purpose Agencies	823,261
DHHS Administration		
03.	Office of Economic Opportunity	823,261
TOTAL COMMUNITY SERVICES BLOCK GRANT		\$ 16,718,188

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. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

SECTION 5.1.(e) 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, 2006.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT (TANF)

SECTION 5.1.(f) The sum of five hundred eighty-six thousand nine hundred thirty-one dollars (\$586,931) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year shall be used to support administration of TANF-funded programs.

SECTION 5.1.(g) The sum of two million two hundred thousand dollars (\$2,200,000) appropriated under this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 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, 2006. 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, 2006, 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, 2006. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

SECTION 5.1.(h) 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, for the 2006-2007 fiscal year 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.

SECTION 5.1.(i) 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 2006-2007 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.(j) 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 2006-2007 fiscal year shall be used in accordance with Section 10.48 of S.L. 2005-276. 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.(k) The sum of one million eight hundred thousand dollars (\$1,800,000) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant for the 2006-2007 fiscal year 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, 2007.

SECTION 5.1.(l) 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 for the 2006-2007 fiscal year 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.

SECTION 5.1.(m) 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.(n) 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 for the 2006-2007 fiscal year 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, 2007.

SECTION 5.1.(o) 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 for the 2006-2007 fiscal year 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.(p) The sum of nineteen million forty-eight thousand three hundred twenty-two dollars (\$19,048,322) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2006-2007 fiscal year for county demonstration grants shall be used for Work First demonstration projects implemented by county departments of social services. The county demonstration grants may be awarded for up to three years with all projects ending no later than the end of fiscal year 2008-2009. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates. The Division of Social Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2008-2009.

Funding provided under the county demonstration grants shall not be used to supplant local funds and counties shall be required to maintain the current level of effort and funding for the Work First program.

SOCIAL SERVICES BLOCK GRANT

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

SECTION 5.1.(r) The sum of two million seven hundred forty-nine thousand six hundred forty-two dollars (\$2,749,642) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services and transferred to the Department of Juvenile Justice and Delinquency Prevention for the 2006-2007 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.(s) The sum of two million five hundred fifty thousand dollars (\$2,550,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2006-2007 fiscal year 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 caring 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 Social Services Block Grant to the Department of Health and Human Services for the 2006-2007 fiscal year shall be used to purchase services at maternity homes throughout the State.

SECTION 5.1.(u) The sum of one million seven hundred six thousand sixty-three dollars (\$1,706,063) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2006-2007 fiscal year shall be allocated to the State Private Child Caring Agencies Fund.

SECTION 5.1.(v) The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

SECTION 5.1.(w) 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.

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT

SECTION 5.1.(x) 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 for the 2006-2007 fiscal year may be used for the operations of the Medical Child Care Pilot.

SECTION 5.1.(y) 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 for the subsidized child care program.

SECTION 5.1.(z) 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.

MENTAL HEALTH BLOCK GRANT

SECTION 5.1.(aa) 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 2006-2007 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 2006-2007 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children in accordance with Section 10.25 of S.L. 2005-276.

SECTION 5.1.(bb) 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 2006-2007 fiscal year. Twenty-five thousand dollars (\$25,000) of this contract shall be paid from the Mental Health Block Grant.

MATERNAL AND CHILD HEALTH BLOCK GRANT

SECTION 5.1.(cc) 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 2006-2007 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.(dd) The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

NER BLOCK GRANTS

SECTION 5.2.(a) Appropriations from federal block grant funds are made for fiscal year ending June 30, 2007, 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 – 2007 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) The Department of Commerce will create a small business/entrepreneurship program in coordination with micro-lending programs and other small business assistance groups in the State. The Department of Commerce shall award up to one million dollars (\$1,000,000) in grants to local governments to provide

assistance to low-to-moderate income individuals for small business and entrepreneurship development.

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.

EXPAND LEA ACCESS TO EDUCATION VALUE ADDED ASSESSMENT SYSTEM (EVAAS)

SECTION 6.(a) The State Board of Education shall identify local school administrative units to receive funds for purchasing licenses to EVAAS diagnostic software based on criteria that shall include (i) identified need, (ii) readiness, and (iii) county wealth, as defined in the Low-Wealth Supplemental Funding Formula. The Board shall identify as many units as possible within funds available for this purpose.

SECTION 6.(b) Funds appropriated for EVAAS in the 2005-2006 fiscal year shall not revert but shall be carried forward to the 2006-2007 fiscal year for expenditures for training related to expanding local school administrative units' access to the EVAAS tool. Any such funds not spent by June 30, 2007, shall revert to the General Fund.

SECTION 6.(c) This section becomes effective June 30, 2006.

USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT

SECTION 7.(a) Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2005-2006 fiscal year but shall remain available until expended.

SECTION 7.(b) Notwithstanding G.S. 143-23, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for the College Information System Project to create a maximum of 20 positions or incur expenditures necessary to transfer the maintenance and administration of the College Information System Project from the vendor to the System Office.

SECTION 7.(c) 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 7.(d) Subsection (a) of this section becomes effective June 30, 2006.

CARRYFORWARD FOR EQUIPMENT

SECTION 8.(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 ten million dollars (\$10,000,000) of the operating funds that were not reverted in fiscal year 2005-2006 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.(b) This section becomes effective June 30, 2006.

ADVANCED VEHICLE RESEARCH CENTER/FUNDS SHALL NOT REVERT

SECTION 9.(a) Funds appropriated to the Advanced Vehicle Research Center Reserve for the 2005-2006 fiscal year for the Advanced Vehicle Research Center of North Carolina, Inc., that are unexpended and unencumbered as of June 30, 2006, shall not revert to the General Fund on June 30, 2006, but shall remain available in the Reserve.

SECTION 9.(b) This section becomes effective June 30, 2006.

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 10. Section 13.1 of S.L. 2005-276 reads as rewritten:

"**SECTION 13.1.(a)** Funds appropriated to the Department of Commerce for the ~~2004-2005~~2005-2006 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005,~~June 30, 2006, 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~~2005-2006 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005,~~June 30, 2006.

SECTION 13.1.(c) This section becomes effective ~~June 30, 2005,~~June 30, 2006."

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 11. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2006, for the purchase or repair of office or information technology equipment during the 2006-2007 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.

PAYMENT OF USUB PENALTIES TO CIVIL PENALTY AND FORFEITURE FUND

SECTION 12.(a) Notwithstanding G.S. 143-18, the Department of Revenue shall be allowed to expend up to two million four hundred thirty-four thousand two hundred seventy dollars and seventy-one cents (\$2,434,270.71) of unencumbered maintenance appropriations as of June 30, 2006, for the purpose of paying the Civil Penalty and Forfeiture Fund. The amount to be expended represents Unauthorized Substance Tax penalty collections that were paid to local law enforcement agencies for the period of July 1, 2005, through December 31, 2005. The source of the unencumbered funds shall come entirely from the Department of Revenue. If unencumbered funds are not sufficient on June 30, 2006, the Department shall use anticipated unencumbered funds as of July 1, 2006.

SECTION 12.(b) Through the 2008-2009 fiscal year, the Department of Revenue shall reduce succeeding distributions to a law enforcement agency under G.S. 105-113.113 to offset the amount that was improperly distributed to that agency, as described in subsection (a) of this section, and the Department shall deposit the funds collected into a reserve account which shall revert at the end of each fiscal year.

ONLINE DEALER REGISTRATION FUNDS

SECTION 13.(a) Notwithstanding the provisions of Section 28.22(b) of S.L. 2005-276, for fiscal year 2006-2007, the Division of Motor Vehicles is prohibited from spending any funds appropriated to it for Online Dealer Registration enhancements.

SECTION 13.(b) This section becomes effective June 30, 2006.

EFFECTIVE DATE

SECTION 14. Sections 5.1 and 5.2 of this act become effective July 1, 2006. Except for Sections 5.1 and 5.2, the remainder of this act becomes effective June 30, 2006, and expires July 7, 2006, at 11:30 p.m.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 4:01 p.m. on the 30th day of June, 2006.

H.B. 2725

Session Law 2006-53

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF CHAPEL HILL.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Chapel Hill are extended to include the following described territory:

In Durham County, beginning at a point on the southern right-of-way of I-40, said point also being the southeastern most corner of Tract C (See PB 142, Pg. 188 Durham County, PIN# 0709-01-19-1301); thence from said point and in a southwesterly direction to the northeastern most corner of the Tract: Durham County Pin # 0709-01-18-1906, said point also being on the western right-of-way of Pope Road; thence in a westerly direction and along with Tract #0709-01-18-1906 and the southern right-of-way of Old Chapel Hill-Durham Road; to a point, said point being the northwestern most corner of aforementioned Tract #0709-01-18-1906, thence crossing

Old Chapel Hill-Durham Road in a northwesterly direction to a point on the northern right-of-way, said point also being the southwestern most corner of the aforementioned Tract C (#0709-01-19-1301); thence with the northern right-of-way of the Old Chapel Hill-Durham Road in an easterly direction to the place and point of beginning.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2658

Session Law 2006-54

AN ACT TO ALLOW THE TOWN OF OAK ISLAND TO IMPOSE A SEWER TREATMENT FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2004-96 reads as rewritten:

"**SECTION 8.** This act applies only within the ~~Town of Holden Beach~~ Towns of Holden Beach and Oak Island."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2491

Session Law 2006-55

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF CANDOR.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Candor are extended by adding the following described territory:

TRACT 1 (Hicks Property, Deed Book 280, Page 411, Montgomery County Registry)

Beginning at spike in the centerline of SR 1573, being the northwest corner of Roman Catholic Church property as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 20 degrees 0 minutes East along the western line of said Roman Catholic Church property, also being the existing corporate limit line for the town of Candor, for a distance of 822.5 feet to spike in the centerline of SR 1573, thence North 85 degrees 42 minutes West for a distance of 325.6 feet to a stake in the eastern right of way of US 220 bypass, thence North 0 degrees 14 minutes East along said right of way for a distance of 752.8 feet to a stake in said right of way, thence South 83 degrees 50 minutes East of a distance of 40.5 feet to the point of beginning. Containing 3.14 acres, more or less.

TRACT 2 (CP&L Property, Deed Book 229, Page 478, Montgomery County Registry)

(Hicks Property, Deed Book 280, Page 407, Montgomery County Registry) Beginning at a concrete monument at the northeast corner of Roman Catholic Church property, as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 87 degrees 57 minutes 8 seconds East along SR 1508 for a distance of 539.93 feet

to a concrete monument, thence South 84 degrees 11 minutes East along SR 1508 for a distance of 732.7 feet to a concrete monument, thence South 4 degrees 18 minutes West for a distance of 687.8 feet to a concrete monument on the existing corporate limit line for the town of Candor, also being the northeast corner of the David and Frieda Bruton property as recorded in Deed Book 338, Page 157 in the Montgomery County Registry, thence North 85 degrees 42 minutes West along said corporate limit line and northern line of said Bruton property for a distance of 732.5 feet to a concrete monument, thence North 89 degrees 26 minutes 15 seconds West along said corporate limit line and northern line of said Bruton property for a distance of 539.78 feet to a concrete monument, being the southeast corner of said Roman Catholic Church property, thence North 0 degrees 35 minutes 14 seconds East along said corporate limit line and eastern line of said Roman Catholic Church property for a distance of 720.72 feet to the point of beginning. Containing 20.6 acres, more or less.

TRACT 3 (Maximum Property, Deed Book 517, Page 418, Montgomery County Registry)

Beginning at an existing iron rod at the intersection of the northern right of way of NC 211 and the existing corporate limit line of the town of Candor, being the southeast corner of the Montgomery County Water System tank property as recorded in Deed Book 224, Page 433 in the Montgomery County Registry, thence North 4 degrees 10 minutes 58 seconds East along eastern line of said Water System property, the western right of way of SR 1508 and said corporate limit line for a distance of 1215.23 feet to an existing iron pipe, the following four calls are along the property either now or formerly owned by Katherine McAuley Kalish as recorded in Deed Book 90, Page 338: (1) North 72 degrees 30 minutes 7 seconds East for a distance of 935.07 feet to an existing iron pipe, (2) South 7 degrees 30 minutes 9 seconds West for a distance of 209.07 feet to an existing iron pipe, (3) North 74 degrees 0 minutes 4 seconds East for a distance of 949.01 feet to an existing iron pipe, (4) North 2 degrees 11 minutes 50 seconds West for a distance of 1255.20 feet to an existing iron pipe, thence South 83 degrees 58 minutes 44 seconds East for a distance of 517.67 feet to an existing iron rod, being the northwest corner of S T Wooten Corp property as recorded in Deed Book 463, Page 60 in the Montgomery County Registry, thence South 6 degrees 50 minutes 20 seconds East along the western line of said S T Wooten property for a distance of 845.50 feet to an existing iron rod, thence North 83 degrees 21 minutes 50 seconds East along the south line of said S T Wooten property to an existing iron rod, thence South 12 degrees 9 minutes 48 seconds East along the Montgomery-Moore county line for a distance of 702.34 feet to a point on the northern right of way of NC 211, thence South 67 degrees 18 minutes 13 seconds West along said right of way for a distance of 194.55 feet to a computed point, thence South 67 degrees 42 minutes 52 seconds West along said right of way for a distance of 293.60 feet to a computed point, thence South 67 degrees 53 minutes 2 seconds West for a distance of 2262.14 feet to a computed point, thence South 68 degrees 11 minutes 3 seconds West along said right of way for a distance of 455.92 feet to the point of beginning. Containing 78.67 acres, more or less.

SECTION 2. This act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2656**Session Law 2006-56**

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND OTHER DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Dortches:

Commencing at a magnetic nail located at the intersection of the centerlines of Benvenue Road (NC 43) and South Browntown Road (SR 1527); thence S 52°41'51"E 517.69 feet to an existing iron axle on the northern right-of-way of Benvenue Road, the southwest corner of Falls Road Baptist Church property, Tract A, Map Book 16 Page 391; thence along the common line between Falls Road Baptist Church and James E. Wells, Deed Book 1857 Page 805, N 04°41'26"E 172.85 feet to an iron pipe; thence along the common line between Falls Road Baptist Church and Janet D. Beabout, Deed Book 1674 Page 245, N 04°53'16"E 205.66 feet to an angle iron found; thence along the common line between Falls Road Baptist Church and property now or formerly owned by Sally L. Stancil, et al, N 05°00'54"E 466.60 feet to an iron pipe set, the POINT OF BEGINNING; thence continuing along the same line N 05°00'54"E 506.25 feet to an existing iron axle found, the northwest corner of Tract A, Map Book 16 Page 391; thence along the common line between the church and James R. Byrd and Cheryl D. Byrd, tenants in common, recorded in Deed Book 1900 Page 392, S 85°16'40"E 268.71 feet to an iron pipe set; thence along the existing jurisdictional boundary between the City of Rocky Mount and the town of Dortches a curve being concave to the right and having a radius of 7,900 feet and a chord bearing and distance of S 32°54'31"W 574.36 feet to the point of beginning and containing 1.61 acres and being a portion of Tract A, Map Book 16 Page 391, Stony Creek Township, Nash County Registry, as shown on map by Mack Gay Associates, P.A. November 7, 2005, Project Number P050335.

SECTION 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. The following described property is removed from the corporate limits of the City of Morganton:

BEGINNING on a stake in the Morganton Dyeing and Finishing Corp. line, said point being North 88° West 110 feet from the northeast corner of said tract of land described in Book 142, Page 168, of the Burke County Registry; and runs thence North 88° West 165 feet to a stake in Morganton Dyeing & Finishing Corp. line; thence South 0° 30' East 476 feet to a stake alongside margin of Rural Paved Road #1949; thence with margin of said road North 87° 30' East 200 feet to a stake along margin of said road; thence a new line North 4° 15' West 462 feet to the BEGINNING corner in the Morganton Dyeing & Finishing Corp. line.

And being a tract of land located approximately 1.4 miles from the primary corporate limits of the City of Morganton and further described in the Warranty Deed

recorded in Book 943, at Page 733 of the Burke County Registry and no other tract whatsoever.

SECTION 4. Section 3 of this act shall have no effect upon the validity of any liens of the City of Morganton for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Morganton.

SECTION 5. The property described in Section 3 of this act shall revert to the Residential Transition zoning classification under the zoning ordinances of the City of Morganton until such time as the city reclassifies the property to another classification under the procedures required by such zoning ordinances.

SECTION 6. This act becomes effective June 30, 2006.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2604

Session Law 2006-57

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY IN JOHNSTON COUNTY TO THE CORPORATE LIMITS OF THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Clayton are extended to include the following described territory:

All of Tract One, containing 457.815 acres, as shown on a map entitled "Map for Jack E. Norwood and wife, Gloria A. Norwood, and N.C.S.U. Foundation, Inc. and Marty Flynn" dated April 14, 2005, and recorded on four sheets in Plat Book 66 at Page 209-212 Johnston County Registry, reference to which is hereby made for metes and bounds directions and distances, the Southwest boundary being the Neuse River, the Southeast boundary being along the meanders of Mark Creek, the Northeast boundary being the center line of Pritchard Road (S.R.#1714) and the Northwest boundary being a new line shown on Sheets One, Three, and Four.

AND

That certain tract or parcel of land in Wilders Township, Johnston County, North Carolina, more particularly described as follows:

BEGINNING at an iron stake in the Smithfield Road in Dewey's line or at Dewey's corner, and running thence along said road S 31 degrees 30' E 574.9 feet, S 27 degrees 30' E 109.6 feet, S 13 degrees 45' E 96.4 feet, S 5 degrees 15' W 134.4 feet, and S 6 degrees 30' W 554.4 feet to an iron pipe, newly established corner between R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker, thence N 86 degrees W 254 feet to an iron pin; thence S 61 degrees 45' W 2720 feet to an iron pipe; thence S 82 degrees 30' W 444 feet to a stake; thence S 78 W 376 feet to a stake; thence S 36 degrees 15' W 100 feet to a stake; thence S 4 degrees 45' W 242 feet to an iron stake; thence S 44 degrees W 379 feet to an iron stake; thence S 37 W 925 feet to an iron stake; thence S 65 W 125 feet to a pine and iron stake; thence N 68 W 1420 feet to an iron pipe; thence S 75 degrees 45' W 3030 feet to a white oak on the bank of Neuse River; thence N 6 degrees 15' E 1611 feet to a stake, Williamson's line; thence with Williamson's line S 87 degrees 30 minutes E 2845 feet to a stake; thence continuing with Williamson's line N 4 E 289.7 feet to a stake; thence continuing with Williamson's

line S 86 degrees 30' E 1353 feet to a stake; thence continuing with Williamson's line N 4 degrees 45' E 2695 feet to an iron stake, Dewey's line; thence with said Dewey's line N 75 degrees 30' E 1744 feet to an iron stake; thence continuing with Dewey's line S 00 degrees 50' W 396 feet to an iron stake; thence continuing with Dewey's line S 89 degrees 10' E 2100 feet to the BEGINNING, containing 354 acres, more or less, according to plat and survey of C. B. Fulghum, C.E., made in July, 1945, of record in Plat Book 4, page 185 in the office of the Register of Deeds of Johnston County, and being the same tract or parcel of land conveyed to R. L. Whitfield and wife by C. A. Pope and wife, and conveyed to J. M. Gregory and W. D. Parker by R. L. Whitfield and wife, Sudie P. Whitfield by deed dated June 16, 1947, and recorded in Book 470, page 217, Johnston County Registry, subject to the establishment of a dividing line between the lands of the said R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker by a written instrument dated October 9, 1945, and recorded in Book 443, page 290, Johnston County Registry.

This tract is known as Grantor's W. D. Parker Tract 8686.

Excluding from the descriptions above is any property not located in Johnston County.

SECTION 2. This act becomes effective June 30, 2006.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 2549

Session Law 2006-58

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF LANDIS AND TO AUTHORIZE THE TOWN TO EXERCISE PLANNING AND ZONING POWERS IN THE DESCRIBED AREA PRIOR TO ANNEXATION OF THE AREA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The following described property is added to the corporate limits of the Town of Landis:

TRACT I:

BEGINNING at a point in the center of the Fleming Crossroads and Five Forks Rd on Atwell's line; thence North 33 West with said Road 680 feet to a stake in the center of said Road, corner of Lot 2; thence South 57 West 420 feet to a stake; thence South 15 West 1650 feet to an iron stake; corner of Lot 2; thence North 88 West 1318 feet to Carter's line, corner to Lot No. 1; thence South 3-3/4 West 650 feet to a stone, Carter's corner on Chester Deal's line; thence with Chester Deal's line, South 88 East 2359 feet to an iron stake on Atwell's line; thence North 4 East 1929 feet to the Beginning. Containing 71 acres, more or less. SAVE AND EXCEPT the following described real estate conveyed to Latt J. Carter and Wife, Myrtle S. Carter by deed recorded in Deed Book 337 at page 300, Rowan County Registry. Located about One mile North from Saw, near the Mill Bridge Road. Beginning at a stone and an iron pipe, Carter's corner in the line of the C.C. Deal Estate, and runs thence with the Carter line, North 3-3/4 deg. East 242 feet to an iron pipe, a new corner in the Carter Line; thence two new lines as follows: (1) South 86-3/4 deg. East 900 feet to an iron pipe, a new corner, (2) South 3-3/4 deg. West 242 feet to an iron pipe, a new corner in the Carter line; thence with the

Carter line, North 86-3/4 deg West, passing the Carter corner, 900 feet to the Beginning, containing 5 acres, more or less.

TRACT II:

BEGINNING at a point on the Northern side of Brown rd. in the line of Leroy Wilhelm, this beginning point lying North 89 East 250.52 feet, more or less, from an old corner of the C.K. Atwell property near the point where a dirt road intersects Brown Rd., this beginning point also lies south 89 West 1168.48 feet, more or less, from an old corner of C.K. Atwell and Worth Corriher in the line of Leroy Wilhelm, and runs thence along the Wilhelm line, North 89 East 1168.48 feet, more or less, to a stake, a corner of Worth Corriher; thence along the old line, the same being a line of Worth Corriher, due south 1567 feet, more or less, to a stake, an old corner; thence continuing along another line of Worth Corriher, South 89 West 1168.48 feet, more or less, to a point, a new corner, this being the corner of John K. Atwell's tract in the line of Worth Corriher; thence along a new line due North 1567.5 feet, more or less, to a point in the old line, the point of Beginning. Said tract containing 42.048 acres. LESS AND EXCEPT 3.97 Acres more or less. Reference tax parcel ID 223-036

TRACT III:

BEGINNING at a stone in the field on the west side of a dirt road running between Brown Rd. and Patterson Rd., this beginning point being a corner of lots Nos. 4 and 5 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", being also a corner of George R. Fleming, Hubert I. Patterson and Leonard Patterson, and also being an old original corner of the C.K. Atwell Property, and runs thence along the old line, the same being the line of Lot No. 5 as shown on the map of the "L.A. Corriher's Mt. Moriah Church Farm" property, South 85 East 381 feet to a state, corner of Tract No. 5 and also an old corner; thence continuing along the old line, the same being a line of Leroy Wilhelm, due south 1699.5, 5 feet to a stake, an old corner; thence continuing along the old line and along Wilhelm's line, North 89 East 250.52 feet to a point, a new corner, this corner lying South 89 East 1168.48 feet from the corner of Sue Evelyn Atwell and Worth Corriher; thence along a new line running due South 1567.5 feet, more or less, to a point, a new corner in the old line, said line being an old line of Worth Corriher; thence with Corriher's line and continuing with the line of Latt J. Carter, South 89 West 745.52 feet; more or less, to a stake, corner of Tract No. 3 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", this being a corner of Lamont Goodnight; thence along Goodnight's line and along the line of Tract No. 3 North 4 East 1983 feet to a stone on the North side of Brown Rd.. said stone being in the line of Tract No. 4; thence continuing along the line of Tract 4. North 3-15 East 1373 feet to a stone, the point of BEGINNING.

TRACT IV:

BEGINNING at a stake on bank of branch Sloan Freeze's corner; thence N. 4 E. 14.17 chains to a stone S.G. Pethel's corner; thence S. 24 E. 10.00 chains to a persimmon tree Pethel's corner; thence S. 60 W. 2.60 chains to a cedar; thence N. 80 W. 3.23 chains to an ash; thence S. 77 W. 3.06 chains to poplar; thence S. 76 W. 7.73 chains to the BEGINNING, containing 16 1/10 acres more or less.

TRACT V:

On the Waters of Grant's Creek, BEGINNING at a black jack on Bostian's line and runs South 74 poles to a hickory; thence South 89 West 176 poles to a Spanish oak; thence North 74 poles to a Sourwood; thence North 89 East 176 poles to the BEGINNING, containing (85) acres, more or less. LESS AND EXCEPT all the portion of land located on the west side of Millbridge Rd. containing 32.43 acres more or less.

TRACT VI:

BEGINNING at a nail and cap at the intersection of the center lines of Mill Bridge Rd. (State Road No. 1350) and Concordia Church Rd. (State Rd. No. 1554) and runs thence with the center line of Mill Bridge Road South 6 deg. 45 min West 114 feet to a point in the center line of said rd; thence three new lines with Wilma D. Carrigan as follows: (1) South 84 deg. 30 min. East 566.7 feet to an iron rod; and (3) North 79 deg. 53 min. West 596.8 feet to an iron cap in the center line of Mill Bridge Rd; thence with the center line of Millbridge Rd. South 2 deg. 13 min West 297.9 feet to the point of BEGINNING, and containing 5.2 acres, said description being in accordance with map prepared for Wilma D. Carrigan dated May 25, 1976 by Hudson and Almond Surveyors.

TRACT VII:

BEGINNING at an existing iron, said iron further referenced as being the southeast corner of Ruth Freeze, Larry Freeze, and Valerie Freeze as found in Deed Book 802, page 148 and further referenced as Tax Map 225 Parcel 003 and further referenced as being the northeast corner of Freddie D. Freeze as found in Deed Book 690, Page 895 and further referenced as Tax Map 225, Parcel 062; thence continuing along a new line South 76 deg. 43 min 32 sec East 2,370.31 feet to an existing iron rod being located in the line of a lake for the Town of Landis; thence continuing along border of said lake, South 19 deg. 59 deg. 34 sec. west 97.00 feet to a point; thence continuing South 39 deg. 03 min. 34 sec. West 170.05 feet; thence continuing South 32 deg, 5 min. 04 sec. West 149.67 feet; thence South 35 deg. 33 min 25 sec. West 18.72 feet to a point; thence North 85 deg. 31 min. 52 sec East 100.00 Feet to a point; thence North 51 deg. 35 min. 58 sec. west 148.00 feet to a point; thence continuing North 67 deg. 12 min. 21 sec. West 1,738.38 feet to a point; thence continuing North 86 deg. 41 min 30 sec. West 230.22 feet to a point; thence continuing North 26 deg. 39 min. 38 sec. West 94.19 feet to the point of BEGINNING.

TRACT VIII:

BEGINNING at a computed point in the centerline of N.C. Highway 152 and in the corner of a 3.943 acre tract: thence with said 3.943 acre tract North 15 degrees 32 minutes 56 seconds West passing an existing #5 rebar at 51.14 feet for a total distance of 388.78 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 21 degrees 44 minutes 35 seconds West passing an existing #5 rebar 201.36 feet for a total distance of 406.96 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 88 degrees 00 minutes 00 seconds West 67.73 feet to an existing #5 rebar at the corner of a 3.943 acre tract and Harrill S. Wiggins; thence with Wiggins North 02 degrees 00 minutes 00 seconds East passing an existing 1" pipe at 671.74 feet for a total distance of 1329.79 feet to an existing 1" pipe in the corner of Murrah A. Corriher; thence with the Corriher North 88 degrees 00 minutes 00 seconds West 394.32 feet to a set #5 rebar in the corner of Murray A. Corriher; thence with the Corriher North 03 degrees 18 minutes 47 seconds East passing an existing 1.5" pipe at 465.69 feet for a total distance of 632.72 feet to a pipe in R.S. Freeze's line; thence with Freeze North 02 degrees 33 minutes 35 seconds east 4.76 feet to an existing stone in the corner of R.S. Freeze and S.E. Campbell, thence with Campbell North 42 degrees 19 minutes 54 seconds east 394.74 feet to an existing 36" sweet gum in the corner of S.E. Campbell; thence with Campbell following the courses and distances: (1) South 13degrees 08 minutes 55 seconds East 280.34 feet to an existing ½" pipe; thence (2) South 14degrees 02 minutes 57 seconds West 166.00 feet to an existing #8 rebar; thence (3) South 89 degrees 11 minutes 23 seconds East

974.81 feet to an existing railroad spike in the corner of S.E. Campbell and J.A. Lipe Heirs; thence with Lipe South 02 degrees 42 minutes 38 seconds West 2,024.40 feet to a nail in the corner of Johnsie Deaton Fisher and Wiley Dale Wilson; thence with Wilson North 87 degrees 46 minutes 45 seconds West 15 feet to an existing 5" flat bar in the corner of Wiley Dale Wilson; thence with Wilson South 02 degrees 37 minutes 01 seconds West passing an existing 5" flat bar at 500.66 feet for a total distance of 527.35 feet to a computed point in the centerline of N.C. Highway 152; thence with N.C. Highway 152 South 84 degrees 05 minutes 14 seconds West 312.09 feet to the place and point of BEGINNING and containing 51.831 acres as shown on the boundary survey of the Stewart M. Beaver Estate prepared by Rufus Jackson Love, R.L.S. dated September 24, 1996.

TRACT IX:

BEGINNING at a 1" iron spike, said spike being located in centerline of the margin of the right-of-way for Lake Wright Road and further referenced as being located in the common lines of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932, the same being designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and in the common line of Wallace G. Lyerly as found in Deed Book 571, Page 465, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 120, Parcel 4, said point further referenced as being located North 50 deg. 54 min. 16 sec. West 664.96 feet from a computed point, said computed point being located along the centerline of the intersection of Lake Wright Road and N.C. Highway 152, said point further referenced as being located South 80 deg. 19 min. 15 sec. West 267.15 feet from an existing iron spike, said iron spike being the common corner of two separate tracts as purchased by R. Brian Johnson, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and Tax Map 120, Parcel 5; thence, from the point of BEGINNING the following courses and distances: North 50 deg. 54 min. 16 sec. West 389.78 feet to a 4" flat blade, said blade being the common corner of Wallace G. Lyerly and the common corners of Lots Nos. 10 and 11, the Fisher Farm Estates, as found in the Rowan County Register of Deeds Office at Book of Maps, Page 3218; thence continuing North 49 deg. 59 min. 54 sec. West 794.72 feet to a 1-1/4" existing iron rod, said iron rod being the common corner of Lots Nos. 7 and 8; thence continuing North 49 deg. 31 min. 21 sec. West 55.17 feet to a 1/2" iron pin, said iron pin being the common corner of Jeffrey L. McCollum; thence continuing along the common line of Jeffrey L. McCollum North 49 deg. 31 min. 14 sec. West 420.99 feet to a 1/2" existing iron pin, said iron pin being the common corner of J. A. Deaton Properties, LTD, and Jeffrey L. McCollum; thence continuing along the common line of J. A. Deaton Properties, LTD, North 49 deg. 31 min. 14 sec West 421 feet to an existing iron pin, said iron pin being located in the common line of Sandra Lee Sinclair as found in Deed Book 787, Page 828; thence continuing along the common line of Sandra Lee Sinclair North 1 deg. 31 min. 47 sec. East 451.33 feet to an existing spike, said spike in a leaning 20" maple, said spike further referenced as being the common corner of Sandra Lee Sinclair and Steven E. Campbell as found in Deed Book 565, Page 731; thence continuing along the common line of Steven E. Campbell the following courses and distances: North 1 deg. 47 min. 20 sec East 403.78 feet (passing a nail set in a 1" iron rod .28' Southeast of property line at 203.60 feet) to an existing nail, said nail being located by 5/8" existing iron rod; thence continuing North 47 deg. 00 min. 24 sec. East 618.11 feet (passing a 1" existing iron rod, the same being .61' Northwest of property line at 417.13 feet) to an existing nail by a 5/8" existing iron rod, said iron rod being the common corner of Steven E. Campbell

and The Warrior Golf Club, LLC, as found in Deed Book 796, Page 409; thence continuing along the common line of The Warrior Golf Club, LLC, South 88 deg. 24 min. 30 sec. East 776.04 feet to an existing nail by a 1" existing iron rod, the same being the common corner of The Warrior Golf Club, LLC, as designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcels 76 and 5; thence continuing along the common line of The Warrior Golf Club, LLC, South 87 deg. 15 min. 46 sec. East. 386.24 feet (passing a ½" existing iron rod at 312.82 feet, the same being the common corner of Thomas E. Tweed as found in Deed Book 712, Page 265) to a new iron pin, said iron pin being located along an existing stone and being the common line of Thomas E. Tweed; thence continuing along the common line of Thomas E. Tweed South 89 deg. 25 min. 33 sec. East 154.3 feet to a new iron pin, said iron pin being located on the right-of-way of Lake Wright Road and being the common corner of Thomas E. Tweed; thence continuing within the margin of the right-of-way for Lake Wright Road South 89 deg. 25 min. 33 sec East 25.64 feet to a computed point, said computed point being the centerline of Lake Wright Road and further referenced as being located North 89 deg. 25 min. 33 sec. West 21.28 feet from the common corner of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932; thence, continuing with the margin of a right-of-way for Lake Wright Road, the following courses and distances: (1) South 13 deg. 22 min. 6 sec. West 620.54 feet; (2) South 12 deg. 47 min. 47 sec. West 599.16 feet; (3) along a curve having a radius of 1227.70 feet with a chord bearing and distance of South 6 deg. 39 min. 15 sec. West 262.70 feet and an arc length of 263.20 feet; (4) South 0 deg. 30 min. 47 sec. West 562.52 feet to a point; (5) along a curve having a radius of 804.15 feet with a chord bearing and distance of South 4 deg. 43 min. 51 sec. West 118.30 feet and an arc length of 118.40 feet; (6) South 8 deg. 56 min. 58 sec. West 80.89 feet; and (7) along a curve having a radius of 439.02 feet with a chord bearing and distance of 16 deg. 43 min. 26 sec. East 380.40 feet and an arc length of 393.44 feet. LESS AND EXCEPTING, HOWEVER, all of Lots Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, as shown upon the map of WRIGHT FIELD, recorded in Map Book 9995, at Page 4481, Rowan County Registry. The property conveyed herewith is all of Parcel 006 on Rowan County Tax Map 225.

SECTION 1.(b) This section becomes effective September 30, 2007.

SECTION 2. Notwithstanding subsection 1(b) of this act, the Town of Landis may begin to exercise its planning and zoning powers under Article 19 of Chapter 160A of the General Statutes in the area described in subsection 1(a) of this act after the date that this act becomes law.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law on the date it was ratified.

H.B. 1432

Session Law 2006-59

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-3 reads as rewritten:

"§ 10B-3. **Definitions.**

The following definitions apply in this Chapter:

- (1) ~~"Acknowledgment" means a~~ Acknowledgment. – A notarial act in which ~~an individual, a notary certifies that at a single time and place;~~ place all of the following occurred:
- ~~Appears~~ An individual appeared in person before the notary and ~~presents a record; and~~ presented a record.
 - ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence and~~ evidence.
 - The individual did either of the following:
 - ~~indicates~~ Indicated to the notary that the signature on the record ~~was the individual's signature.~~ was voluntarily affixed by the individual for the purposes stated within the record.
 - Signed the record while in the physical presence of the notary and while being personally observed signing the record by the notary.
- (2) ~~"Affirmation" means a~~ Affirmation. – A notarial act, ~~or part thereof,~~ act which is legally equivalent to an oath and in which ~~a notary certifies that an individual at a single time and place;~~ place all of the following occurred:
- ~~Appears~~ An individual appeared in person before the ~~notary;~~ notary.
 - ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence;~~ evidence.
 - ~~Makes~~ The individual made a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".
- (3) ~~"Attest" or "attestation" means the~~ Attest or attestation. – ~~The act of completing the written evidence of a notarial act, to wit: completion of a certificate by a notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation.~~ act.
- (4) ~~"Commission" means the~~ Commission. – The empowerment to perform notarial acts and the written evidence of authority to perform those acts.
- (5) ~~"Credible witness" means an honest, reliable, and impartial person~~ Credible witness. – An individual who is personally known to the notary and ~~takes an oath or affirmation from the notary to confirm a signer's identity.~~ to whom all of the following also apply:
- The notary believes the individual to be honest and reliable for the purpose of confirming to the notary the identity of another individual.
 - The notary believes the individual is not a party to or beneficiary of the transaction.
- (6) ~~"Department" means the~~ Department. – The North Carolina Department of the Secretary of State.
- (7) ~~"Director" means the~~ Director. – The Division Director for the North Carolina Department of the Secretary of State Notary Public Section.

- (8) ~~"Jurat" means a Jurat. – A notary's certificate evidencing the administration of an oath or affirmation, certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ____ day of _____ 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:~~
- a. ~~That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;~~
 - b. ~~That the signer appeared before the notary on the date indicated;~~
 - c. ~~That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.~~
- (9) ~~"Moral turpitude" means conduct~~ Moral turpitude. – Conduct contrary to expected standards of honesty, morality, or integrity.
- (10) ~~"Nickname" means a~~ Nickname. – A descriptive, familiar, or shortened form of a proper name.
- (11) ~~"Notarial act," "notary act," and "notarization" mean the~~ Notarial act, notary act, and notarization. – The act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-31. G.S. 10B-20(a).
- (12) ~~"Notarial certificate" and "certificate" mean the~~ Notarial certificate and certificate. – The portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.
- (13) ~~"Notary public" and "notary" mean a~~ Notary public and notary. – A person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.
- (14) ~~"Oath" means a~~ Oath. – A notarial act, or part thereof, act which is legally equivalent to an affirmation and in which a notary certifies that an individual at a single time and place: place all of the following occurred:
- a. ~~Appears~~ An individual appeared in person before a notary; the notary.
 - b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory evidence; and evidence.
 - c. ~~Makes~~ The individual made a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".
- (15) ~~"Official misconduct" means either~~ Official misconduct. – Either of the following:
- a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

- b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.
- (16) ~~"Personal appearance" and "appear in person before a notary" mean an~~ Personal appearance and appear in person before a notary. – An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.
- (17) ~~"Personal knowledge of identity" means familiarity~~ Personal knowledge or personally know. – Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (18) ~~"Principal" means an~~ Principal. – One of the following:
 - a. ~~In the case of an acknowledgment, the individual whose signature is notarized; or an identity and due execution of a record is being certified by the notary.~~
 - b. ~~In the case of a verification or proof, the individual other than a credible subscribing witness, taking an oath or affirmation from the notary whose:~~
 - i. Identity and due execution of the record is being proven;
 - or
 - ii. Signature is being identified as genuine.
 - c. In the case of an oath or affirmation, the individual who makes a vow of truthfulness on penalty of perjury.
- (19) ~~"Record" means information~~ Record. – Information that is inscribed on a tangible medium and called a traditional or paper record.
- (20) ~~"Regular place of work or business" means a~~ Regular place of work or business. – A location, office or other workspace, where an individual regularly spends all or part of the individual's work time.
- (21) ~~"Revocation" means the~~ Revocation. – The cancellation of the notary's commission stated in the order of revocation.
- (22) ~~"Satisfactory evidence of a signer's identity" means identification~~ Satisfactory evidence. – Identification of an individual based on either of the following:
 - a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.
 - b. The oath or affirmation of one credible witness ~~unaffected by the record or transaction who is personally known to the notary and~~ who personally knows the individual seeking to be identified.
- (23) ~~"Seal" and "stamp" mean a~~ Seal or stamp. – A device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-37.
- (24) ~~"Secretary" means the~~ Secretary. – The North Carolina Secretary of State or the Secretary's designee.
- (25) ~~"Signature" means the act of personally signing one's name in ink by hand.~~

- (26) ~~"Subscribing witness" means a~~ Subscribing witness. – A person who either watches another individual sign a record or takes that individual's acknowledgment of an already signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign. signs a record for the purpose of being a witness to the principal's execution of the record or to the principal's acknowledgment of his or her execution of the record. A subscribing witness may give proof of the execution of the record as provided in subdivision (28) of this section.
- (27) ~~"Suspension" and "restriction" means the~~ Suspension and restriction. – The termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.
- (28) ~~"Verification" or "proof" means a~~ Verification or proof. – A notarial act in which a notary certifies that all of the following occurred:
- a. An individual appeared in person before the notary.
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence.
 - c. The individual was not a party to or beneficiary of the transaction.
 - d. ~~where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already executed record. The individual took an oath or gave an affirmation and testified to one of the following:~~
 - i. The individual is a subscribing witness and the principal who signed the record did so while being personally observed by the subscribing witness.
 - ii. The individual is a subscribing witness and the principal who signed the record acknowledged his or her signature to the subscribing witness.
 - iii. The individual recognized either the signature on the record of the principal or the signature on the record of the subscribing witness and the signature was genuine."

SECTION 2. G.S. 10B-5(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

- (1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.
- (2) Reside or have a regular place of work or business in this State.
- (3) Reside legally in the United States.
- (4) Speak, read, and write the English language.
- (5) Possess a high school diploma or equivalent.
- (6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

- (7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.
- (8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths.
- (9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. Except for ~~The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application filed.~~

SECTION 3. G.S. 10B-7(b) reads as rewritten:

"(b) The information contained provided in an application that relates to subdivisions (2), (3), (6), and (7) of subsection (a) of this section ~~under this section is a public record as defined in G.S. 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in under Chapter 132 of the General Statutes.~~"

SECTION 4. G.S. 10B-10(c) reads as rewritten:

"(c) ~~The~~ After the appointee qualifies by taking the oath of office required under subsection (b) of this section, the register of deeds shall ~~then~~ place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public."

SECTION 5. G.S. 10B-11(b) reads as rewritten:

"(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

- (1) Submit a new application ~~under G.S. 10B-6, meeting the requirements of G.S. 10B-6, except for G.S. 10B-6(2).~~
- (2) Meet all the requirements of ~~G.S. 10B-5(b)~~ G.S. 10B-5(b), except for G.S. 10B-5(b)(5), (6), and (9).
- (3) ~~Pass~~ Achieve a passing score on the written examination required under G.S. 10B-8, unless G.S. 10B-8(b). This requirement does not apply if the notary is a licensed member of the North Carolina State Bar, Bar, or if the notary has been continuously commissioned in North Carolina since July 10, 1991, and has never been disciplined by the Secretary.

SECTION 6. G.S. 10B-20(a) reads as rewritten:**"§ 10B-20. Powers and limitations.**

- (a) A notary may perform any of the following notarial acts:
 - (1) Acknowledgments.
 - (2) Oaths and affirmations.
 - (3) ~~Execute jurats.~~
 - (4) Verifications or proofs."

SECTION 7. G.S. 10B-20(b) reads as rewritten:

- "(b) A notarial act shall be attested by all of the following:
 - (1) The signature of the notary, exactly as shown on the notary's commission.
 - (2) The ~~readable~~-legible appearance of the notary's ~~name, name exactly as shown on the notary's commission. The legible appearance of the name may be ascertained from the notary's typed or printed name near the signature.~~notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.
 - (3) The clear and legible appearance of the notary's stamp or seal.
 - (4) A statement of the date the notary's commission expires. The statement of the date that the notary's commission expires may appear in the notary's stamp or seal or elsewhere in the notarial certificate."

SECTION 8. G.S. 10B-20(c) reads as rewritten:

- "(c) A notary is ~~disqualified from performing~~shall not perform a notarial act if any of the following apply:
 - (1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is ~~to be performed; however, performed.~~However, nothing in this Chapter shall require a notary to complete the notarial certificate attesting to the notarial act in the presence of the principal or subscribing witness.
 - (2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.
 - (2a) The credible witness is not personally known to the notary.
 - (3) ~~The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.~~
 - (4) ~~The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.~~
 - (5) The notary is a signer ~~of or is named, other than as a trustee in a deed of trust, in the document~~of, party to, or beneficiary of the record, that is to be notarized. However, a disqualification under this subdivision shall not apply to a notary who is named in a record solely as the trustee in a deed of trust, the drafter of the record, the person to whom a registered document should be mailed or sent after recording, or the attorney for a party to the record, so long as the notary is not also a party to the record individually or in some other representative or fiduciary capacity.
 - (6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-31, other than fees or other consideration paid for services

rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker."

SECTION 9. G.S. 10B-20(g) reads as rewritten:

"(g) ~~Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons~~ Persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents."

SECTION 10. G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of subsection ~~(g)~~(i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 11. G.S. 10B-20(m) reads as rewritten:

"(m) If notarial certificate wording is not provided or indicated for a record, a ~~nonattorney~~ notary who is not also a licensed attorney shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law."

SECTION 12. G.S. 10B-20(o) reads as rewritten:

"(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

- (1) Notwithstanding the provisions of this ~~section or G.S. 10B-35(b), section,~~ a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;
- (2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and
- (3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration."

SECTION 13. G.S. 10B-23 reads as rewritten:

"§ 10B-23. Improper records.

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed. However, a notary may administer an oath or affirmation without completing a jurat.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph."

SECTION 14. G.S. 10B-31 reads as rewritten:

"§ 10B-31. Fees for notarial acts.

The maximum fees that may be charged by a notary for notarial acts are as follows:

- (1) For acknowledgments, jurats, verifications or proofs, five dollars (\$5.00) per principal signature.

- (2) For oaths or affirmations without a signature, five dollars (\$5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for ~~a principal's identity~~, the identity of a principal or subscribing witness."

SECTION 15. G.S. 10B-22 as enacted in Section 4 of S.L. 2005-391 and as codified as G.S. 10B-35 reads as rewritten:

"§ 10B-22. Official signature.

(a) ~~A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.~~

(b) ~~The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.~~

(c) ~~A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:~~

- (1) ~~Inform the appropriate law enforcement agency in the case of theft or vandalism.~~
- (2) ~~Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.~~

(d) ~~As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.~~

"§ 10B-35. Official signature.

When notarizing a paper record, a notary shall sign by hand in ink on the notarial certificate. The notary shall comply with the requirements of G.S. 10B-20(b)(1) and (b)(2). The notary shall affix the official signature only after the notarial act is performed. The notary shall not sign a paper record using the facsimile stamp or an electronic or other printing method."

SECTION 16. G.S. 10B-36 reads as rewritten:

"§ 10B-36. Official seal.

(a) A notary shall keep an official seal or stamp (~~herein "seal")~~ that is the exclusive property of the notary. The notary shall keep the seal in a secure ~~location that is accessible only to the notary.~~ location. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the notary's signature shall appear on the same ~~page.~~ page of a record as the text of the notarial certificate.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been ~~stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image;~~ lost or stolen:

- (1) Inform the appropriate law enforcement agency in the case of theft or vandalism.
- (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal."

SECTION 17. G.S. 10B-37 reads as rewritten:

"§ 10B-37. Seal image.

(a) ~~Near~~ A notary shall affix the notary's official seal near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.~~record.~~

(b) A notary's official seal shall include ~~only~~ all of the following elements:

- (1) The notary's name exactly as ~~commissioned~~ commissioned.
- (2) The words "~~Notary Public~~"; "Notary Public".
- (3) The county of commissioning, including the word "County" or the abbreviation "~~Co.~~"; and "Co.".
- (4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. Upon receiving a commission or a recommission on or after October 1, 2006, a notary shall not use a ~~The circular seal shall not be that is~~ less than 1 ½ inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 ½ inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(c1) Alterations to any information contained within the seal as embossed or stamped on the record are prohibited.

(d) ~~A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.~~ seal, as it appears on a record, may contain the permanently imprinted, handwritten, or typed date the notary's commission expires.

(e) Any reference in the General Statutes to the seal of a notary shall include the stamp of a notary, and any reference to the stamp of a notary shall include the seal of the notary.

(f) The failure of a notarial seal to comply with the requirements of this section shall not affect the sufficiency, validity, or enforceability of the notarial certificate, but shall constitute a violation of the notary's duties."

SECTION 18. G.S. 10B-40 reads as rewritten:

"§ 10B-40. Notarial certificates in general.

(a) A notary shall not make or give a notarial certificate unless the notary has either (i) personal knowledge or satisfactory evidence of the identity of the principal or, if applicable, the subscribing ~~witness, or (ii) satisfactory evidence of a signer's identity.~~ witness.

(a1) By making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies as follows:

- (1) As to an acknowledgment, all those things described in G.S. 10B-3(1).
- (2) As to an affirmation, all those things described in G.S. 10B-3(2).
- (3) As to an oath, all those things described in G.S. 10B-3(14).
- (4) As to a verification or proof, all those things described in G.S. 10B-3(28).

(a2) In addition to the certifications under subsection (a1) of this section, by making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies to all of the following:

- (1) At the time the notarial act was performed and the notarial certificate was signed by the notary, the notary was lawfully commissioned, the notary's commission had neither expired nor been suspended, the notarial act was performed within the geographic limits of the notary's commission, and the notarial act was performed in accordance with the provision of this Chapter.
- (2) If the notarial certificate is for an acknowledgment or the administration of an oath or affirmation, the person whose signature was notarized did not appear in the judgment of the notary to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence.
- (3) The notary was not prohibited from acting under G.S. 10-20(c).

(a3) The inclusion of additional information in a notarial certificate, including the representative or fiduciary capacity in which a person signed or the means a notary used to identify a principal, shall not invalidate an otherwise sufficient notarial certificate.

(b) A notarial certificate for the acknowledgment taken by a notary of a principal who is an individual acting in his or her own right or who is an individual acting in a representative or fiduciary capacity ~~taken by a notary~~ is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-41, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it~~ it includes all of the following:

- (1) Identifies the state and county in which the acknowledgment ~~occurred;~~ occurred.
- (2) Names the principal who appeared in person before the ~~notary;~~ notary.
- (3) ~~States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;~~
- (4) Indicates that the principal ~~who~~ appeared in person before the notary and the principal acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein; he or she signed the record.
- (5) States the date of the ~~acknowledgment;~~ acknowledgment.
- (6) Contains the signature and seal or stamp of the notary who took the ~~acknowledgment; and~~ acknowledgment.
- (7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it~~ it includes all of the following:

- (1) Identifies the state and county in which the verification or proof ~~occurred;~~ occurred.
- (2) Names the subscribing witness who appeared in person before the ~~notary;~~ notary.
- (3) ~~States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;~~

- (4) Names the principal whose signature on the record is to be verified or ~~proven; proven.~~
- (5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, named party to the record in question, ~~has no interest in the transaction,~~ signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the ~~already signed record; record.~~
- (6) States the date of the verification or ~~proof; proof.~~
- (7) Contains the signature and seal or stamp of the notary who took the verification or ~~proof; and proof.~~
- (8) States the notary's commission expiration date.

(c1) A notarial certificate for the verification or proof of the signature of a principal or a subscribing witness by a nonsubscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42.1, if it is substantially in a form otherwise prescribed by the laws of this State, or if it includes all of the following:

- (1) Identifies the state and county in which the verification or proof occurred.
- (2) Names the nonsubscribing witness who appeared in person before the notary.
- (3) Names the principal or subscribing witness whose signature on the record is to be verified or proven.
- (4) Indicates that the nonsubscribing witness certified to the notary under oath or by affirmation that the nonsubscribing witness is not a party to or beneficiary of the transaction and that the nonsubscribing witness recognizes the signature of either the principal or the subscribing witness and that the signature is genuine.
- (5) States the date of the verification or proof.
- (6) Contains the signature and seal or stamp of the notary who took the verification or proof.
- (7) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-43, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it~~ it includes all of the following:

- ~~(1) Identifies the state and county in which the oath or affirmation occurred;~~
- (2) Names the principal who appeared in person before the ~~notary;~~ notary unless the name of the principal otherwise is clear from the record itself.
- ~~(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;~~
- (4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the ~~record;~~ record.
- (5) States the date of the oath or ~~affirmation;~~ affirmation.

- (6) Contains the signature and seal or stamp of the notary who took the oath or ~~affirmation; and affirmation.~~
- (7) States the notary's commission expiration date.
- (e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.
- (f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.
- (g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate ~~(including, but not limited to, including G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321). G.S. 90-321.~~ However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part. Any form of acknowledgment or probate authorized under Chapter 47 of the General Statutes shall be conclusively deemed in compliance with the requirements of this section.
- (h) If an individual signs a record and purports to be acting in a representative or fiduciary capacity, that individual is also deemed to represent to the notary that he or she is signing the record with proper authority to do so and also is signing the record on behalf of the person or entity represented and identified therein or in the fiduciary capacity indicated therein. In performing a notarial act in relation to an individual described under this subsection, a notary is under no duty to verify whether the individual acted in a representative or fiduciary capacity or, if so, whether the individual was duly authorized so to do. A notarial certificate may include any of the following:
- (1) A statement that an individual signed a record in a particular representative or fiduciary capacity.
 - (2) A statement that the individual who signed the record in a representative or fiduciary capacity had due authority so to do.
 - (3) A statement identifying the represented person or entity or the fiduciary capacity."

SECTION 19. G.S. 10B-41 reads as rewritten:

"§ 10B-41. Notarial certificate for an acknowledgment.

(a) When properly completed by a notary, a notarial certificate ~~in that~~ substantially complies with the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or who is an individual acting in a representative or fiduciary capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she ~~voluntarily~~ signed the foregoing ~~document for the purpose stated therein and in the capacity indicated:~~ document: name(s) of principal(s).

Date: _____

(Official Seal)

Official Signature of Notary
Notary's printed or typed name, Notary Public
My commission expires: _____

~~(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

- ~~(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;~~
- ~~(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~
- ~~(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and~~
- ~~(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

~~(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."~~

SECTION 20. G.S. 10B-42 reads as rewritten:

"§ 10B-42. Notarial certificate for a verification or proof of subscribing witness.

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that ~~name~~ (name of subscribing witness-witness) personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a ~~named party to the foregoing document,~~ has no interest in the transaction, grantee or beneficiary of the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed ~~name~~ (name of principal (the principal)) sign the foregoing document or (ii) witnessed (name of the principal-principal) acknowledge ~~the principal's~~ his or her signature on the already-signed document.

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

~~(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

- ~~(1) That the subscribing witness appeared in person before the notary on the date indicated;~~
- ~~(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already signed record; and~~

- (3) ~~That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

SECTION 21. Article 1 of Chapter 10B is amended by adding a new section to read:

"§ 10B-42.1. Notarial certificate for a verification of nonsubscribing witness.

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal or subscribing witness by a nonsubscribing witness. The authorization of the form in this section does not preclude the use of other forms.

County, North Carolina

I certify (name of nonsubscribing witness) personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a grantee or beneficiary of the transaction, that (name of nonsubscribing witness) recognizes the signature of (name of the principal or the subscribing witness) and that the signature is genuine.

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires:

(b) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

SECTION 22. G.S. 10B-43 reads as rewritten:

"§ 10B-43. Notarial certificate for an oath or affirmation.

(a) When properly completed by a notary, a notarial certificate ~~in that~~ substantially complies with either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

County, North Carolina

Signed and sworn to ~~(or affirmed)~~ before me this day by ~~name of principal~~ (name of principal).

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires:

-OR-

_____ County, North Carolina

Sworn to ~~(or affirmed)~~ and ~~ascribed~~ subscribed before me this day by ~~name of principal~~ (name of principal).

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

~~(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

- ~~(1) That the principal appeared in person before the notary on the date indicated;~~
- ~~(2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~
- ~~(3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and record.~~
- ~~(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

(d) In either of the forms provided under subsection (a) of this section all of the following shall apply:

- (1) The name of the principal may be omitted if the name of the principal is located near the jurat, and the principal who so appeared before the notary is clear from the record itself.
- (2) The words "affirmed" or "sworn to or affirmed" may be substituted for the words "sworn to".

SECTION 23. G.S. 10B-60 reads as rewritten:

"§ 10B-60. Enforcement and penalties.

(a) The Secretary may ~~warn~~, issue a warning to a notary or restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:

- (1) Holding one's self out to the public as a notary if the person does not have a commission.
- (2) Performing a notarial act if the person's commission has expired or been ~~suspended~~ suspended or restricted.
- (3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

- (1) Takes an ~~acknowledgment~~, performs acknowledgment or administers an oath, affirmation, or jurat ~~oath or affirmation~~ without the principal ~~personally appearing in person~~ before the notary; ~~notary~~.

- (2) ~~Takes a verification or proof of a~~ without the subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity; appearing in person before the notary.
 - (3) Takes an acknowledgment or administers an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal.
 - (4) Takes a verification or proof without personal knowledge or satisfactory evidence of the identity of the subscribing witness.
- (d) A notary shall be guilty of a Class I felony if the notary does any of the following:
- (1) ~~Takes an acknowledgment, verification, proof, or jurat, acknowledgment or a verification or a proof, or performs~~ administers an oath or affirmation if the notary knows it is false or fraudulent.
 - (2) ~~Takes an acknowledgment, or jurat acknowledgment or administers an~~ oath or affirmation without the principal appearing in person before the notary if the notary does so with the intent to commit fraud.
 - (3) ~~Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.~~
- (e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.
- (f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.
- (g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.
- (h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.
- (i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.
- (j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.
- (k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting."

SECTION 24. Part 9 of Article 1 of Chapter 10B of the General Statutes is amended by adding the following new sections to read:

"§ 10B-67. Erroneous commission expiration date cured.

An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related

record if the notary is, in fact, lawfully commissioned at the time of the notarial act.

"§ 10B-68. Technical defects cured.

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document.

(b) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in G.S. 10B-20(b) and defects in the commissioning or recommissioning of the notary that were approved by the Department under this Chapter.

"§ 10B-69. Official forms cured.

(a) The notarial certificate contained in a form issued by a State agency prior to October 1, 2006, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

(b) The notarization using a certificate under subsection (a) of this section shall be deemed valid if executed in compliance with the law at the time the form was issued.

"§ 10B-99. Presumption of regularity.

(a) In the absence of evidence of fraud on the part of the notary, or evidence of a knowing and deliberate violation of this Article by the notary, the courts shall grant a presumption of regularity to notarial acts so that those acts may be upheld, provided there has been substantial compliance with the law. Nothing in this Chapter modifies or repeals the common law doctrine of substantial compliance in effect on November 30, 2005.

(b) A notarial act performed before October 1, 2006, shall be deemed valid if it complies with the law as it existed on or before December 1, 2005."

SECTION 25. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
- (2) The state and county of commissioning of the registrant.
- (3) The expiration date of the registrant's notary commission.
- (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
- (5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
- (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
- (7) The e-mail address of the registrant.

~~The information contained provided in a registration that relates to subdivision (7) of this section under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in under Chapter 132 of the General Statutes or Statutes, except as provided by rule."~~

SECTION 26. G.S. 47-14 is amended by adding a new subsection to read:

"(f) The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption shall apply regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37."

SECTION 27. G.S. 47-37.1 reads as rewritten:

"§ 47-37.1. Other forms of proof.

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative or fiduciary capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (~~G.S. 10B-25 et. seq.~~) shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative or fiduciary capacity, the acknowledgment or proof of that individual's signature ~~may, but is not required to;~~ may:

- (1) State that the individual signed the instrument in a representative or fiduciary capacity.
- (2) State that the individual who signed the instrument in a representative or fiduciary capacity had due authority to do so.
- (3) Identify the represented person or ~~entity;~~ the fiduciary capacity.

(c) This section relates only to the form of proof or acknowledgment. The capacity and authority of the individual who signs an instrument presented for registration are governed by other provisions of law.

(d) This section applies to proofs and acknowledgments made before, on, or after December 1, 2005."

SECTION 28. G.S. 47-38 reads as rewritten:

"§ 47-38. Acknowledgment by grantor.

~~Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:~~

When properly completed, a certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for one or more individuals, acting in his, her, or their own right or, whether or not so stated in the notarial certificate, in a representative or fiduciary capacity, including one or more individuals acting on behalf of an unincorporated association, as an officer or director of a corporation, as a partner of a general or limited partnership, as a manager or member of a limited liability company, as the trustee of a trust, as the personal representative of a decedent's estate, as an agent or attorney in fact for another, as the guardian of a minor or an incompetent, or as a public official. The authorization of the form in this section does not preclude the use of other forms. This section applies to notarial certificates made before, on, and after December 1, 2005.

North Carolina, _____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the ~~grantor or maker~~) individual whose acknowledgment is being

taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).
(Official seal.)

(Signature of officer.)

(Title)"

SECTION 29. G.S. 47-41.01 is amended by adding a new subsection to read:

"(e) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnerships, limited liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 30. G.S. 47-41.02 is amended by adding a new subsection to read:

"(h) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnership, limited liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 31. Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-41.2. Technical defects.

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate.

(b) This section does not apply to the requirements for registration contained in G.S. 47-14(a) and a register of deeds shall not accept for registration an instrument that does not comply with the requirements of G.S. 47-14(a)."

SECTION 32. The General Statutes Commission shall study the need for additional changes to laws relating to notaries public, the notarization of documents, and the registration of instruments notarized in other jurisdictions. The Commission shall determine whether there is a need for additional conforming changes in the law that arise from changes made by this act and recommend to the General Assembly any legislation to address the needs identified by this study. The General Statutes Commission shall report the results of its study to either the 2007 or 2009 General Assembly.

SECTION 33. G.S. 10B-11(b)(3) as amended in Section 5 of this act becomes effective July 1, 2006. The remainder of this act becomes effective October 1, 2006, and except as otherwise set forth in this act, applies to notarial acts performed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 7:15 p.m. on the 3rd day of July, 2006.

H.B. 1069**Session Law 2006-60****AN ACT CONSOLIDATING AND CLARIFYING BUILDING HEIGHT LIMITS FOR THE TOWN OF OAK ISLAND.**

Whereas, the Town of Oak Island was consolidated from the former towns of Yaupon Beach and Long Beach by S.L. 1999-66; and

Whereas, each of the former towns established building height limitations by local acts of the legislature, setting limits at 35 feet except that the height limitation may be increased with the approval of a majority of the qualified voters in a referendum of an ordinance; and

Whereas, both former towns held and passed referenda to increase height in certain flood hazard zones; and

Whereas, the standards passed for the former towns are not consistent and furthermore leave unanswered questions about the application of the standards on parcels where flood zones transition inside the parcel boundaries; and

Whereas, the Town Council of the Town of Oak Island has requested the introduction of legislation to consolidate and clarify the height standards that apply within the Town of Oak Island, with the legislation not modifying any other portion of or procedures for increasing height limits as outlined in S.L. 1989-456 and S.L. 1991-772; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The building height standards in the Town of Oak Island shall be set at 35 feet except inside flood zones designated by the National Flood Insurance Program as Velocity Zones where maximum building height may be up to 41 feet.

SECTION 2.(a) The height limitation contained in Section 1 of this act may be increased within the town with the approval by the qualified voters of the town in a referendum of an ordinance to increase or clarify the limit. The referendum may be called only by the governing body of the town.

SECTION 2.(b) A proposition to approve an ordinance under this section shall be printed on the ballot in substantially the following form:

"Shall the ordinance (describe the effect of the ordinance) be approved?

[] Yes [] No."

SECTION 3. This act supersedes and consolidates all prior local acts relating to height and local referenda for the former towns of Yaupon Beach and Long Beach.

SECTION 4. This act does not apply to corporate limits of the Town of Oak Island located north of the Atlantic Intracoastal Waterway where building height limits are established in accordance with general law rather than this act.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law on the date it was ratified.

S.B. 1896**Session Law 2006-61**

AN ACT TO AUTHORIZE THE BERTIE COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE RENTAL HOUSING FOR TEACHERS AND OTHER LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58, G.S. 115C-518, or any other provision of law, and subject to the restrictions set out in this act, the Bertie County Board of Education may contract with any person, partnership, corporation, or other business entity to construct, provide, or maintain affordable rental housing on property owned or leased by the Bertie County Board of Education.

SECTION 2. Notwithstanding G.S. 66-58, G.S. 115C-518, or any other provision of law, the Bertie County Board of Education may rent housing units owned by the Board pursuant to this act for residential use. In renting these housing units, the Board shall give priority to Bertie County public school teachers and shall restrict the rental of such units exclusively to such teachers or other Bertie County School System employees. The Board shall have the authority to establish reasonable rents for any such housing units and may in its discretion charge below-market rates.

SECTION 3. This act shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or health and safety statutes, rules, or regulations.

SECTION 4. This act authorizes the Board to construct and maintain an affordable housing project located at 249 White Oak Road, Windsor, North Carolina

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law on the date it was ratified.

H.B. 1989**Session Law 2006-62**

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWNS OF PRINCETON AND SMITHFIELD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas,

Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law on the date it was ratified.

H.B. 2289

Session Law 2006-63

AN ACT AMENDING THE CHARTER OF THE CITY OF ASHEVILLE RELATING TO AN AGREEMENT MAKING A FULL AND FINAL SETTLEMENT OF DISPUTED MATTERS RELATING TO THE AMOUNT OF FRANCHISE TAX DUE THE CITY BY TWO PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The language added to Section 389 of Chapter 16 of the Private Laws of 1923 by Chapter 652 of the 1993 Session Laws reads as rewritten:

"; provided, however, the imposition and payment of taxes, authorized by this section, on and by Carolina Power & Light Company and Public Service Company of North Carolina, Inc., their successors or assigns, shall be governed by that Agreement dated the 24th day of May 1994, by and among the City of Asheville, Carolina Power & Light Company, and Public Service Company of North Carolina, Inc., which Agreement was approved and authorized to be executed by the Asheville City Council by its Resolution Number 94-96, and which Agreement is spread upon the official minutes of the City Council of the same ~~date~~ date; provided that said Agreement has been amended by Amendment to Agreement dated the 22nd day of November 2005 by and among the City of Asheville and Carolina Power & Light Company, with the consent of Public Service Company of North Carolina, Inc., which Amendment was approved and authorized to be executed by the Asheville City Council by its Resolution Number 05-218, and which Amendment is spread upon the official minutes of the City Council of the same date."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law on the date it was ratified.

H.B. 1237

Session Law 2006-64

AN ACT TO REVISE THE MEMBERSHIP OF THE BOARD OF TRUSTEES OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 128-28(c) reads as rewritten:

"(c) Members of Board. – The Board shall consist of (i) seven members of the Board of Trustees of the Teachers' and State Employees' Retirement ~~System~~, System

appointed under G.S. 135-6(b): the State Treasurer; the Superintendent of Public Instruction; the two members appointed by the General Assembly; and the three members appointed by the Governor who are not members of the teaching profession or State employees; and ~~three local governmental officials~~ (ii) seven members designated by the ~~Governor~~. Governor:

- (1) One ~~local governmental official~~ member shall be a mayor, mayor or a member of the governing body, or a full-time officer body of a city or town participating in the Retirement System, ~~and one local governmental official~~ System;
- (2) One member shall be a county commissioner ~~or a full-time officer~~ of a county participating in the Retirement System, ~~and one local governmental official~~ System;
- (3) One member shall be a law-enforcement officer employed by an employer participating in the Retirement ~~System~~. System;
- (4) One member shall be a county manager of a county participating in the Retirement System;
- (5) One member shall be a city or town manager of a city or town participating in the Retirement System;
- (6) One member shall be an active, Fair Labor Standards Act nonexempt, local governmental employee of an employer; and
- (7) One member shall be a retired, Fair Labor Standards Act nonexempt, local governmental employee of an employer.

The Governor shall designate ~~these three local governmental officials~~ seven members on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the ~~three local governmental officials~~ seven members designated by the Governor shall serve on the Board in addition to the regular duties of their city, town, or county office: Provided, that if for any reason any ~~local governmental official so designated~~ member appointed pursuant to subdivisions (1) through (6) of this subsection vacates the city, town, or county office or employment which ~~he the member~~ held at the time of this designation, the Governor shall designate ~~some other local governmental official~~ another member to serve until the next regular date for the designation of ~~local governmental officials~~ members to serve on the Board."

SECTION 1.2. G.S. 128-28(f) reads as rewritten:

"(f) Voting Rights. – Each trustee shall be entitled to one vote in the Board. ~~Five~~ A majority of affirmative votes in attendance shall be necessary for a decision by the trustees at any meeting of said Board."

SECTION 2. This act is effective when it becomes law, and the additional members shall be designated by the Governor to serve until April 1, 2008, when their successors shall be designated.

In the General Assembly read three times and ratified this the 28th day of June, 2006.

Became law upon approval of the Governor at 1:36 p.m. on the 9th day of July, 2006.

H.B. 1074

Session Law 2006-65

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 reads as rewritten:

"§ 115C-366. Assignment of student to a particular school.

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth ~~have~~ has access to a free, appropriate public education. ~~education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The A local board of education shall not charge the a homeless child, as defined in this subsection, child or youth tuition for enrollment. The An unaccompanied youth or a homeless child's or youth's parent, guardian, or person standing in loco parentis to the child, legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review. As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if~~ if all of the following apply:

- (1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of~~ of one of the following:

- a. The death, serious illness, or incarceration of a parent or legal guardian,
 - b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
 - c. Abuse or neglect by the parent or legal guardian,
 - d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~
 - e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or
 - f. The loss or uninhabitability of the student's home as the result of a natural disaster; disaster.
- (2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit; and~~ unit.
- (3) The caregiver adult with whom the student resides and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:
- a. Confirm the qualifications set out in this subsection establishing the student's residency,
 - b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
 - c. Attest that the caregiver adult with whom the student is residing has been given and accepts responsibility for educational decisions for the child, ~~including receiving notices of discipline under G.S. 115C 391, attending conferences with school personnel, granting permission for school-related activities, and taking appropriate action in connection with student records.~~ student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver adult with whom the student is living shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver adult with whom the student is living that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the local board shall admit and assign as soon as practicable the student to an appropriate

school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~under this Article as long as the address is kept confidential from the public under ~~the provisions of~~Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

(1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect, and that definition also shall apply to this section.

(2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be

- the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.
- (3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other decisions or actions recommended or required by the school in connection to that student.
 - (4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).
 - (5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.
 - (6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.
 - (7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.
 - (8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.
 - (9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.
 - (10) Unaccompanied youth. – Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001."

SECTION 2. G.S. 115C-366.2 is repealed.

SECTION 3. This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 1:38 p.m. on the 9th day of July, 2006.

S.B. 1741

Session Law 2006-66

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT OF 2005, TO INCREASE TEACHER AND STATE EMPLOYEE PAY, TO REDUCE THE SALES TAX RATE AND THE INCOME TAX RATE APPLICABLE TO MOST SMALL BUSINESSES, TO CAP THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE

AT ITS CURRENT RATE, TO ENACT OTHER TAX REDUCTIONS, AND TO PROVIDE FOR THE FINANCING OF HIGHER EDUCATION FACILITIES AND PSYCHIATRIC HOSPITALS AND OTHER CAPITAL PROJECTS.

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. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

SECTION 1.2. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006."

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 adjusted for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2006-2007 fiscal year.

Current Operations – General Fund	FY 2006-2007
EDUCATION	
Community Colleges System Office	\$ 64,160,027
Department of Public Instruction	139,944,021
University of North Carolina – Board of Governors	
Appalachian State University	2,189
East Carolina University	
Academic Affairs	(1,589,622)
Health Affairs	0
Elizabeth City State University	(28,887)
Fayetteville State University	42,675
NC Agricultural and Technical University	(223,690)
North Carolina Central University	(312)
North Carolina School of the Arts	29,159

North Carolina State University	
Academic Affairs	(3,908,353)
Agricultural Extension	65,287
Agricultural Research	0
University of North Carolina at Asheville	(569,398)
University of North Carolina at Chapel Hill	
Academic Affairs	(846,370)
Health Affairs	(795,501)
Area Health Education Centers	0
University of North Carolina at Charlotte	(471,439)
University of North Carolina at Greensboro	(1,138)
University of North Carolina at Pembroke	(299,992)
University of North Carolina at Wilmington	(100,910)
Western Carolina University	(735,491)
Winston-Salem State University	0
General Administration	0
University Institutional Programs	138,037,440
Related Educational Programs	0
North Carolina School of Science and Mathematics	52,250
UNC Hospitals at Chapel Hill	0
Total	\$ 128,657,897

HEALTH AND HUMAN SERVICES

Department of Health and Human Services	
Office of the Secretary	\$ (55,163,236)
Division of Aging	5,535,886
Division of Blind Services/Deaf/HH	75,000
Division of Child Development	29,061,908
Division of Education Services	996,783
Division of Facility Services	200,000
Division of Medical Assistance	(107,550,000)
Division of Mental Health	60,238,357
NC Health Choice	0
Division of Public Health	18,135,242
Division of Social Services	15,682,564
Division of Vocation Rehabilitation	0
Total	\$ (32,787,496)

NATURAL AND ECONOMIC RESOURCES

Department of Agriculture and Consumer Services	\$ 3,583,562
Department of Commerce	
Commerce	36,367,483
Commerce State-Aid	7,203,138
NC Biotechnology Center	2,500,000
Rural Economic Development Center	(500,000)

Department of Environment and Natural Resources	
Environment and Natural Resources	14,851,962
Clean Water Management Trust Fund	0

Department of Labor	613,894

JUSTICE AND PUBLIC SAFETY

Department of Correction	\$ 34,911,704

Department of Crime Control and Public Safety	5,954,280

Judicial Department	27,091,712
Judicial Department – Indigent Defense	6,683,129

Department of Justice	4,706,838

Department of Juvenile Justice and Delinquency Prevention	3,454,520

GENERAL GOVERNMENT

Department of Administration	\$ 3,374,539

Office of Administrative Hearings	281,367

Department of State Auditor	57,564

Office of State Controller	0

Department of Cultural Resources	
Cultural Resources	5,421,016
Roanoke Island Commission	0

State Board of Elections	786,620

General Assembly	38,284

Office of the Governor	
Office of the Governor	100,000
Office of State Budget and Management	409,938
OSBM – Reserve for Special Appropriations	1,353,253
Housing Finance Agency	17,437,500

Department of Insurance	
Insurance	455,846
Insurance – Volunteer Safety Workers' Compensation	0

Office of Lieutenant Governor	88,433

Department of Revenue	1,279,782
Department of Secretary of State	468,067
Department of State Treasurer	
State Treasurer	281,784
State Treasurer – Retirement for Fire and Rescue Squad Workers	514,000

TRANSPORTATION

Department of Transportation	\$ 0

RESERVES, ADJUSTMENTS AND DEBT SERVICE

Reserve for Compensation Increases	\$ 688,494,519
Reserve for Teachers' and State Employees' Retirement Rate Adjustment	27,107,200
Retirement System Payback	30,000,000
Information Technology Fund	42,087,229
Reserves for Heating and Cooling Assistance	10,000,000
Reserve for Legal Expenses	1,065,710
Trust Fund for MH/DD/SAS	14,390,000
State Emergency Response Account	20,000,000
Pending Ethics Legislation	422,871
Debt Service	
General Debt Service	(50,000,000)
Federal Reimbursement	0

TOTAL CURRENT OPERATIONS - GENERAL FUND **\$ 1,263,312,193**

GENERAL FUND AVAILABILITY STATEMENT

SECTION 2.2.(a) Section 2.2(a) of S.L. 2005-276 is repealed. The General Fund availability used in adjusting the 2006-2007 budget is shown below:

	FY 2006-2007
Unappropriated Balance from FY 2005-2006 – S.L. 2005-276	\$ 117,227,875
Net Adjustments – S.L. 2005-345	(4,148,833)
Net Adjustments – S.L. 2005-435, S.L. 2005-406, S.L. 2005-376, S.L. 2005-391	(5,826,000)
Adjustment From Estimated to Actual 2005-2006	
Beginning Unreserved Balance	6,133,946
Revised Unappropriated Balance Remaining 2005-2006	\$ 113,386,988

Emergency Appropriation for	
Department of Correction, S.L. 2006-2	\$ (15,000,000)
Projected Reversions from FY 2005-2006	125,000,000
Projected Over Collections from FY 2005-2006	1,072,100,000
Year End Unreserved Credit Balance before Earmarkings	\$ 1,295,486,988
Less: Projected Credit to Savings Reserve	\$ (323,871,747)
Less: Credit to Repairs and Renovation Reserve Account	(222,229,189)
Revised Year End Unreserved Credit Balance	\$ 749,386,052
Revenues Based on Existing Tax Structure	\$ 16,951,416,000
Nontax Revenues	
Investment Income	\$ 78,700,000
Judicial Fees	168,605,271
Disproportionate Share	100,000,000
Insurance	51,543,813
Other Nontax Revenues	202,719,921
Highway Trust Fund Transfer	252,663,009
Highway Fund Transfer	0
Subtotal Nontax Revenues	\$ 854,232,014
Total General Fund Availability	\$ 18,555,034,066
Adjustments to Availability: 2006 Session	
Adjustment to Baseline Revenue Forecast	\$ 698,864,995
Reduce Sales Tax from 4.5% to 4.25% – December 1, 2006	(140,100,000)
Reduce Top Personal Income Tax Rate from	
8.25% to 8.0% - January 1, 2007	(28,600,000)
Mill Rehabilitation Income Tax Credit	(2,800,000)
529 Savings Plan Income Tax Deduction	(1,000,000)
Logging Machinery Sales Tax Exemption	(2,870,000)
IRC Update	(5,100,000)
Joint Filing Options Under Personal Income Tax	(1,000,000)
Railroad Cars Tax Exemption	(400,000)
Bill Lee Act Wage Standard – Certain Manufacturers	(800,000)
Bill Lee Act Adjustment – Clayton Project	(800,000)
Extend Aviation Fuel Tax Credit	(90,000)
Extend Real Property Donation Tax Credit	(100,000)
Small Business Health Insurance Credit of \$250 – January 1, 2007	(7,200,000)
Internet Facility Sales Tax Exemption	(2,250,000)
Oyster Tax Credit	(23,000)
Gas Cap Reserve	(367,000)
Reduce Transfer to Highway Trust Fund	(195,176,407)
Adjust Transfer from Insurance Regulatory Fund	455,846
Adjust Transfer from Treasurer's Office	281,784
Subtotal Adjustments to Availability: 2006 Session	\$ 310,926,218

Revised General Fund Availability for 2006-2007 Fiscal Year	\$ 18,865,960,284
Less: Total General Fund Appropriations	
2006-2007 Fiscal Year	(18,865,960,284)
Unappropriated Balance Remaining	\$ 0

SECTION 2.2.(b) Notwithstanding G.S. 143-15.2 and G.S. 143-15.3A, the State Controller shall transfer two hundred twenty-two million two hundred twenty-nine thousand one hundred eighty-nine dollars (\$222,229,189) from the unreserved credit balance to the Repairs and Renovations Reserve Account on June 30, 2006. This subsection becomes effective June 30, 2006.

SECTION 2.2.(c) Funds transferred under this section to the Repairs and Renovations Reserve Account are appropriated for the 2006-2007 fiscal year to be used in accordance with G.S. 143-15.3A.

SECTION 2.2.(d) Section 2.2(e) of S.L. 2005-276 is repealed effective June 30, 2006.

This subsection becomes effective June 30, 2006

SECTION 2.2.(e) Section 2.2.(f) of S.L. 2005-276 reads as rewritten:

"**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 is two hundred fifty million dollars (\$250,000,000) and for the 2006-2007 fiscal year is two hundred fifty million dollars (\$250,000,000). fifty-five million dollars (\$55,000,000)."

SECTION 2.2.(f) Pursuant to G.S. 105-187.9(b)(2), the sum to be transferred under that subdivision for the 2006-2007 fiscal year is two million four hundred eighty-six thousand six hundred two dollars (\$2,486,602).

SECTION 2.2.(g) There is created in the General Fund a Reserve for the Motor Fuels Tax Ceiling. The sum of twenty-two million nine hundred thirty-three thousand dollars (\$22,933,000) is hereby transferred from the Savings Reserve Account to the Reserve for the Motor Fuels Tax Ceiling for the 2006-2007 fiscal year

The State Treasurer shall transfer funds reserved to hold harmless the Highway Fund and the Highway Trust Fund from the Reserve for the Motor Fuels Tax Ceiling only if the variable wholesale component of the motor fuel excise tax rate in G.S. 105-449.80 would, without the imposition of the cap imposed by Section 24.3 of this act, exceed twelve and four-tenths cents (12.4¢) a gallon. A transfer required under this subsection must be made on a monthly basis. The amount to be transferred from the Reserve for the Motor Fuels Tax Ceiling to the Highway Fund is the difference between the amount of motor fuel excise tax revenue allocated to the Highway Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Fund under this subsection during fiscal year 2006-2007 may not exceed seventeen million six hundred thousand dollars (\$17,600,000). The amount to be transferred from the Reserve for the Motor Fuels Tax Ceiling to the Highway Trust Fund is the difference between the amount of motor fuel excise tax revenue allocated to the Highway Trust Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Trust Fund under this subsection during fiscal year 2006-2007 may not exceed five million seven hundred thousand dollars (\$5,700,000).

Funds remaining in the Reserve for the Motor Fuels Tax Ceiling on June 30, 2007, shall revert to the Savings Reserve Account on June 30, 2007.

PART III. CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

SECTION 3.1. Appropriations from the Highway Fund of the State for maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Fund Appropriations for the 2006-2007 fiscal year.

Current Operations – Highway Fund	2006-2007
Department of Transportation	
Administration	\$ 0
Division of Highways	
Administration	0
Construction	39,439,500
Maintenance	179,731,200
Planning and Research	0
OSHA Program	0
Aeronautics	2,000,000
Ferry Operations	1,000,000
State Aid	
Municipalities	1,439,500
Public Transportation	(14,000,000)
Railroads	3,198,750
Governor's Highway Safety	0
Division of Motor Vehicles	1,886,701
Other State Agencies	11,612,420
Reserves and Transfers	28,523,000
TOTAL	\$254,831,071

HIGHWAY FUND AVAILABILITY STATEMENT

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

Highway Fund Availability Statement	2006-2007
Beginning Credit Balance	26,600,000
Estimated Revenue	1,767,140,000
Total Highway Fund Availability	\$ 1,793,740,000

PART IV. HIGHWAY TRUST FUND APPROPRIATIONS

HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 4.1. Appropriations from the Highway Trust Fund of the State for maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Trust Fund Appropriations for the 2006-2007 fiscal year.

Current Operations – Highway Trust Fund	2006-2007
Intrastate System	100,567,595
Urban Loops	40,665,346
Aid to Municipalities	10,551,886
Secondary Roads	9,271,360
Program Administration	(1,189,780)
Transfer to General Fund	(195,176,407)
GRAND TOTAL CURRENT OPERATIONS AND EXPANSION	(\$35,310,000)

PART VI. GENERAL PROVISIONS

CONTINGENCY AND EMERGENCY FUND ALLOCATIONS

SECTION 6.1.(a) Section 6.2 of S.L. 2005-276 is repealed.

SECTION 6.1.(b) Funds in the amount of five million dollars (\$5,000,000) for the 2006-2007 fiscal year are appropriated to the Contingency and Emergency Fund. Except as provided in subsection (c) of this section, these funds shall be expended only as:

- (1) Required by a court, Industrial Commission, or administrative hearing officer's order;
- (2) Required to call out the national guard; or
- (3) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado, if funds for this purpose are not available in the Reserve for Disaster Expenses as authorized in G.S. 166A.

SECTION 6.1.(c) Up to five hundred thousand dollars (\$500,000) may be spent for purposes other than those set out in subsection (b) of this section. Notwithstanding any other provision of law authorizing expenditures from the Contingency and Emergency Fund, no more than five hundred thousand dollars (\$500,000) of these funds shall be expended for purposes other than those set out in subsection (b) of this section.

AUTHORIZATION TO ESTABLISH RECEIPT-SUPPORTED POSITIONS

SECTION 6.2. 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.

CONSULTATION NOT REQUIRED PRIOR TO ESTABLISHING OR INCREASING FEES PURSUANT TO THE EXECUTIVE BUDGET ACT

SECTION 6.3. 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 2006, or in the Senate and House of Representatives Appropriations Committee Reports on the Continuation, Expansion and Capital Budgets, that were distributed in the Senate and House of Representatives Appropriations and Base Budget Committees and used to explain this act.

NO FEE INCREASES WHICH THE GENERAL ASSEMBLY HAS REJECTED

SECTION 6.4. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-16.7. No fee increases that the General Assembly has rejected.

Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this section, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase."

STATE EMERGENCY RESPONSE ACCOUNT

SECTION 6.5.(a) G.S. 166A-6.01(b)(2) reads as rewritten:

"(b) Disaster Assistance Programs – Type I Disaster. – In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

...

- (2) Public assistance. – State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:
 - a. Eligible entities shall meet the following qualifications:
 - 1. The eligible entity suffers a minimum of ten thousand dollars (\$10,000) in uninsurable losses;
 - 2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding ~~one-half percent (0.5%)~~ one percent (1%) of the annual operating budget;
 - 3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and

4. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.
- b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.
- c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:
 1. Debris clearance.
 2. Emergency protective measures.
 3. Roads and bridges.
 4. Crisis counseling.
 5. Assistance with public transportation needs."

SECTION 6.5.(b) Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-6.02. State Emergency Response Account.

(a) Account Established. – There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Purpose of Funds. – The Governor may spend funds from the Account for the following purposes:

- (1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster as defined by G.S. 166A-6.
- (2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of disaster assistance authorized by G.S. 166A-6 shall continue to be financed by the funds made available under G.S. 166A-6.01.

(c) Reporting Requirement. – The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken."

SECTION 6.5.(c) G.S. 166A-4(1) reads as rewritten:

"(1)(1a) Disaster. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause."

SECTION 6.5.(d) G.S. 166A-4 is amended by adding a new subdivision to read:

"(1) Account. – The State Emergency Response Account established in G.S. 166A-6.02."

INFORMATION TECHNOLOGY FUND AVAILABILITY AND APPROPRIATIONS

SECTION 6.6.(a) Section 6.13.(a) of S.L. 2005-276 reads as rewritten:

"**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:

	FY 2005-2006	FY 2006-2007
<u>Estimated Information Technology Fund Balance, June 30, 2006</u>		<u>\$4,212,225</u>
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~~
<u>Appropriation from General Fund</u>	<u>\$24,375,000</u>	<u>\$50,112,229</u>
~~Total Funds Available~~	~~\$34,375,000~~	~~\$13,025,000~~
<u>Total Funds Available</u>	<u>\$34,375,000</u>	<u>\$59,324,454."</u>

SECTION 6.6.(b) Additional appropriations are made from the Information Technology Fund established in G.S. 147-33.72H for the fiscal year ending June 30, 2007, in the amount of forty-six million two hundred ninety-nine thousand four hundred fifty-four dollars (\$46,299,454).

AMEND CIVIL PENALTY AND FORFEITURE FUND AVAILABILITY

SECTION 6.9.(a) Section 6.37(a) of S. L. 2005-276 reads as rewritten:

"**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:

	FY 2005-2006	FY 2006-2007
Department of Revenue	\$ 80,000,000	~~\$ 85,000,000~~ <u>63,000,000</u>
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~~ <u>1,000,000</u>
University of North Carolina	\$ 5,000,000	~~\$ 5,000,000~~ <u>3,500,000</u>
Other Agencies	\$ 14,500,000	~~\$ 14,500,000~~ <u>10,000,000</u>
Total Funds Available	\$ 120,500,000	~~\$ 125,500,000~~ <u>95,500,000"</u>

SECTION 6.9.(b) Section 6.37(b) of S.L. 2005-276 reads as rewritten:

"**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:

	2005-2006	2006-2007
School Technology Fund	\$ 18,000,000	\$ 18,000,000
State Public School Fund	\$ 102,500,000	~~\$ 107,500,000~~ <u>77,500,000</u>
Total Appropriation	\$ 120,500,000	~~\$ 125,500,000~~ <u>95,500,000"</u>

SECTION 6.9.(c) 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 twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year."

FUNDS FOR ENROLLMENT INCREASES

SECTION 6.10. G.S. 143-11 is amended by adding a new subsection to read:

"(a1) In developing the budget, the Director shall consider the information on student enrollment increases submitted to the Director by the State Board of Education, the State Board of Community Colleges, and the Board of Governors of The University of North Carolina. The Director shall include in the continuation budget the amount the Director proposes to fund for the enrollment increases for public schools, community colleges, and the university system."

EDUCATION LOTTERY FUND REVENUE AND APPROPRIATIONS

SECTION 6.15.(a) Pursuant to G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of four hundred twenty-five million dollars (\$425,000,000) for the 2006-2007 fiscal year.

SECTION 6.15.(b) The appropriations made from the Education Lottery Fund pursuant to G.S. 18C-164(d) for the 2006-2007 fiscal year are as follows:

Class Size Reduction	\$ 127,864,291
Prekindergarten Program	84,635,709
Public School Building Capital Fund	170,000,000
Scholarships for Needy Students	42,500,000
Total Appropriation	\$ 425,000,000

FUNDS FOR INCREASED FUEL COSTS

SECTION 6.16. Notwithstanding G.S. 143-23 or any other provision of law, the State Board of Education may use any funds appropriated for State Aid to Local School Administrative units to cover increases in fuel costs.

Notwithstanding G.S. 143-23 or any other provision of law, all other State agencies may transfer funds within their budgets, including funds appropriated for salaries and wages, to cover the increases in fuel costs.

PART VII. PUBLIC SCHOOLS

TEACHER SALARY SCHEDULES

SECTION 7.1.(a) Effective for the 2006-2007 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 (c) 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 2006-2007 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 31 steps with each step corresponding to one year of teaching experience.

2006-2007 Monthly Salary Schedule
"A" Teachers

Years Of Experience	"A" Teachers	NBPTS Certification
0	\$2,851	N/A
1	\$2,893	N/A
2	\$2,937	N/A
3	\$3,093	\$3,464
4	\$3,233	\$3,621
5	\$3,367	\$3,771
6	\$3,496	\$3,916
7	\$3,600	\$4,032
8	\$3,648	\$4,086
9	\$3,697	\$4,141
10	\$3,747	\$4,197
11	\$3,796	\$4,252
12	\$3,847	\$4,309
13	\$3,898	\$4,366
14	\$3,951	\$4,425
15	\$4,005	\$4,486
16	\$4,060	\$4,547
17	\$4,115	\$4,609
18	\$4,174	\$4,675
19	\$4,232	\$4,740
20	\$4,290	\$4,805
21	\$4,352	\$4,874
22	\$4,413	\$4,943
23	\$4,479	\$5,016
24	\$4,543	\$5,088
25	\$4,608	\$5,161
26	\$4,674	\$5,235

27	\$4,742	\$5,311
28	\$4,813	\$5,391
29	\$4,884	\$5,470
30+	\$4,982	\$5,580.

2006-2007 Monthly Salary Schedule
"M" Teachers

Years Of Experience	"M" Teachers	NBPTS Certification
0	\$3,136	N/A
1	\$3,182	N/A
2	\$3,231	N/A
3	\$3,402	\$3,810
4	\$3,556	\$3,983
5	\$3,704	\$4,148
6	\$3,846	\$4,308
7	\$3,960	\$4,435
8	\$4,013	\$4,495
9	\$4,067	\$4,555
10	\$4,122	\$4,617
11	\$4,176	\$4,677
12	\$4,232	\$4,740
13	\$4,288	\$4,803
14	\$4,346	\$4,868
15	\$4,406	\$4,935
16	\$4,466	\$5,002
17	\$4,527	\$5,070
18	\$4,591	\$5,142
19	\$4,655	\$5,214
20	\$4,719	\$5,285
21	\$4,787	\$5,361
22	\$4,854	\$5,436
23	\$4,927	\$5,518
24	\$4,997	\$5,597
25	\$5,069	\$5,677
26	\$5,141	\$5,758
27	\$5,216	\$5,842
28	\$5,294	\$5,929
29	\$5,372	\$6,017
30+	\$5,480	\$6,138.

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 2006-2007 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 2006-2007 fiscal year, commencing July 1, 2006, is as follows:

2006-2007
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	\$3,592				
5	\$3,741				
6	\$3,884				
7	\$4,000				
8	\$4,053	\$4,053			
9	\$4,108	\$4,108			
10	\$4,163	\$4,163	\$4,218		
11	\$4,218	\$4,218	\$4,274		
12	\$4,274	\$4,274	\$4,331	\$4,389	
13	\$4,331	\$4,331	\$4,389	\$4,450	\$4,511
14	\$4,389	\$4,389	\$4,450	\$4,511	\$4,572
15	\$4,450	\$4,450	\$4,511	\$4,572	\$4,637
16	\$4,511	\$4,511	\$4,572	\$4,637	\$4,702
17	\$4,572	\$4,572	\$4,637	\$4,702	\$4,766
18	\$4,637	\$4,637	\$4,702	\$4,766	\$4,835
19	\$4,702	\$4,702	\$4,766	\$4,835	\$4,903
20	\$4,766	\$4,766	\$4,835	\$4,903	\$4,976
21	\$4,835	\$4,835	\$4,903	\$4,976	\$5,047
22	\$4,903	\$4,903	\$4,976	\$5,047	\$5,120
23	\$4,976	\$4,976	\$5,047	\$5,120	\$5,192
24	\$5,047	\$5,047	\$5,120	\$5,192	\$5,268
25	\$5,120	\$5,120	\$5,192	\$5,268	\$5,347
26	\$5,192	\$5,192	\$5,268	\$5,347	\$5,426
27	\$5,268	\$5,268	\$5,347	\$5,426	\$5,535
28	\$5,347	\$5,347	\$5,426	\$5,535	\$5,646
29	\$5,426	\$5,426	\$5,535	\$5,646	\$5,759
30	\$5,535	\$5,535	\$5,646	\$5,759	\$5,874
31	\$5,646	\$5,646	\$5,759	\$5,874	\$5,991
32		\$5,759	\$5,874	\$5,991	\$6,111
33			\$5,991	\$6,111	\$6,233
34			\$6,111	\$6,233	\$6,358
35				\$6,358	\$6,485
36				\$6,485	\$6,615
37					\$6,747

Principal and Assistant Principal Salary Schedules
Classification

Yrs. of Exp	PrinV (44-54)	PrinVI (55-65)	PrinVII (66-100)	PrinVIII (101+)

0-14	\$4,637			
15	\$4,702			
16	\$4,766	\$4,835		
17	\$4,835	\$4,903	\$5,047	
18	\$4,903	\$4,976	\$5,120	\$5,192
19	\$4,976	\$5,047	\$5,192	\$5,268
20	\$5,047	\$5,120	\$5,268	\$5,347
21	\$5,120	\$5,192	\$5,347	\$5,426
22	\$5,192	\$5,268	\$5,426	\$5,535
23	\$5,268	\$5,347	\$5,535	\$5,646
24	\$5,347	\$5,426	\$5,646	\$5,759
25	\$5,426	\$5,535	\$5,759	\$5,874
26	\$5,535	\$5,646	\$5,874	\$5,991
27	\$5,646	\$5,759	\$5,991	\$6,111
28	\$5,759	\$5,874	\$6,111	\$6,233
29	\$5,874	\$5,991	\$6,233	\$6,358
30	\$5,991	\$6,111	\$6,358	\$6,485
31	\$6,111	\$6,233	\$6,485	\$6,615
32	\$6,233	\$6,358	\$6,615	\$6,747
33	\$6,358	\$6,485	\$6,747	\$6,882
34	\$6,485	\$6,615	\$6,882	\$7,020
35	\$6,615	\$6,747	\$7,020	\$7,160
36	\$6,747	\$6,882	\$7,160	\$7,303
37	\$6,882	\$7,020	\$7,303	\$7,449
38	\$7,020	\$7,160	\$7,449	\$7,598
39		\$7,303	\$7,598	\$7,750
40		\$7,449	\$7,750	\$7,905
41			\$7,905	\$8,063

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 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books 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 2006-2007 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 2006-2007 fiscal year, beginning July 1, 2006.

School Administrator I	\$3,093	\$5,809
School Administrator II	\$3,283	\$6,161
School Administrator III	\$3,485	\$6,536
School Administrator IV	\$3,625	\$6,796
School Administrator V	\$3,771	\$7,071
School Administrator VI	\$4,001	\$7,499
School Administrator VII	\$4,162	\$7,801

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 hired on or after July 1, 2006.

SECTION 7.3.(b) The monthly salary ranges that follow apply to public school superintendents for the 2006-2007 fiscal year, beginning July 1, 2006.

Superintendent I	\$4,417	\$8,275
Superintendent II	\$4,689	\$8,775
Superintendent III	\$4,975	\$9,310
Superintendent IV	\$5,280	\$9,875
Superintendent V	\$5,604	\$10,477

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 shall be five and one-half percent (5.5%), commencing July 1, 2006. 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 AND FAIR MINIMUM PAY

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 five and one-half percent (5.5%), commencing July 1, 2006.

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 2005-2006 and who continue their employment for fiscal year 2006-2007 by providing an annual salary increase for employees of five and one-half percent (5.5%).

SECTION 7.4.(c) The State Board of Education may adopt salary ranges for noncertified personnel to support increases of five and one-half percent (5.5%) for the 2006-2007 fiscal year.

SECTION 7.4.(d) Effective July 1, 2006, permanent full-time noncertified public school employees whose salaries are supported from the State's General Fund shall be paid a minimum salary of at least twenty thousand one hundred twelve dollars (\$20,112) per year. Permanent, full-time employees working on a schedule requiring less than 12 months' service per year and permanent part-time employees, whose salaries are supported from the State's General Fund, shall be paid the minimum salary pro rata. 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.

BONUS FOR CERTIFIED PERSONNEL AT THE TOP OF THEIR SALARY SCHEDULES

SECTION 7.5. Effective July 1, 2006, any permanent personnel employed on July 1, 2006, and paid at the top of the principal and assistant principal salary schedule shall receive a one-time bonus equivalent to two percent (2%). Personnel defined under G.S. 115C-325(a)(5a) are not eligible to receive the bonus.

FUNDS TO IMPLEMENT THE ABCS OF PUBLIC EDUCATION

SECTION 7.6.(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 2005-2006 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 up to:
 - a. One thousand five hundred dollars (\$1,500) for each teacher and for certified personnel; and
 - b. Five hundred dollars (\$500.00) for each teacher assistant.
- (2) Incentive awards in schools that meet the expected improvements may be up to:
 - a. Seven hundred fifty dollars (\$750.00) for each teacher and for certified personnel; and
 - b. Three hundred seventy-five dollars (\$375.00) for each teacher assistant.

SECTION 7.6.(b) Notwithstanding G.S. 143-23, the State Board of Education may use funds appropriated to the Department of Public Instruction and to the State Public School Fund to establish a consolidated, comprehensive program through which to provide assistance to low-performing schools. For this purpose only,

the Board may, with approval from the Office of State Budget and Management, transfer funds between personal service and nonpersonal service line items currently supporting positions, related operating costs, and contracts for school improvement teams and for assistance teams. Funds transferred pursuant to this section shall not be used to raise the salary of existing employees.

The Board shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations by January 15, 2007, on any restructuring of the assistance program pursuant to this section.

SECTION 7.6.(c) The State Board of Education shall review the incentive award structure described in this section to ensure that extraordinary performance is rewarded. In addition, the Board shall determine whether the relationship between awards for teachers and teacher assistants and the Board's strategic priorities is appropriate. The Board shall provide a preliminary report of its findings and recommendations to the Joint Legislative Education Oversight Committee by December 15, 2006.

CHILDREN WITH DISABILITIES

SECTION 7.7. The State Board of Education shall allocate funds for children with disabilities on the basis of two thousand nine hundred seventy-two dollars and fifty-two cents (\$2,972.52) per child for a maximum of 170,240 children for the 2006-2007 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 2006-2007 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 7.8. The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of nine hundred sixty-one dollars and sixty cents (\$961.60) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2006-2007 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 57,419 children for the 2006-2007 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.

DISADVANTAGED STUDENT SUPPLEMENTAL FUNDING

SECTION 7.10. Section 7.8 of S.L. 2005-276 is amended by adding a new subsection to read:

"**SECTION 7.8.(c)** Beginning in the 2006-2007 fiscal year, funds appropriated to a local education agency (LEA) for disadvantaged student supplemental funding (DSSF)

shall be allotted based on: (i) the LEA's eligible DSSF population and (ii) the difference between a teacher-to-student ratio of 1:21 and the following teacher-to-student ratios:

- (1) For counties with wealth greater than ninety percent (90%) of the statewide average, a ratio of 1:20.5;
- (2) For counties with wealth not less than eighty percent (80%) and not greater than ninety percent (90%) of the statewide average, a ratio of 1:20;
- (3) For counties with wealth less than eighty percent (80%) of the statewide average, a ratio of 1:19.5; and
- (4) For LEAs receiving DSSF funds in 2005-2006, a ratio of 1:16. These LEAs shall receive no less than the DSSF amount allotted in 2005-2006.

For the purpose of this subsection, wealth shall be calculated under the low-wealth supplemental formula."

LEARN AND EARN HIGH SCHOOLS

SECTION 7.11. Section 7.32 of S.L. 2005-276 is amended by adding the following new subsections:

"SECTION 7.32.(e) Enrollment fees and tuition for The University of North Carolina courses in which Learn and Earn students are enrolled are allowable uses of these funds. Tuition costs may include laboratory fees assessed to all students enrolled in the course or a similar course.

SECTION 7.32.(f) Textbooks required for college courses in which Learn and Earn students are enrolled may be purchased with these funds.

SECTION 7.32.(g) Payment of fees from these funds by local school administrative units to partnering community colleges and universities are restricted to technology or course fees. Funds appropriated in this act shall not be used to support the cost of athletic or other student activity or campus fees not required by enrollment in a specific course.

SECTION 7.32.(h) The State Board of Education shall allot funds for university enrollment, tuition and fees, and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in university courses. The State Board of Education shall allot funds for community college fees and textbooks on the basis of and after verification of the credit hour enrollment of Learn and Earn students in community college courses."

NC WISE POSITIONS

SECTION 7.12.(a) Notwithstanding G.S. 143-23, the State Board of Education may, in consultation with the Office of Information Technology Services, use funds appropriated in this act for NC WISE to create a maximum of 20 positions and incur expenditures necessary to transfer the maintenance and administration of the NC WISE system from the vendor to the Department of Public Instruction.

SECTION 7.12.(b) The Department of Public Instruction shall report on a quarterly basis to the Joint Legislative Education Oversight Committee on the implementation of the NC WISE project.

LITERACY COACHES

SECTION 7.13. Funds are appropriated in this act to support the selection and hiring of 100 literacy coaches. The State Board of Education shall allocate these

positions to the 100 schools with the lowest average scores on the eighth grade end-of-grade reading test over the most recent three years for which data is available.

EXPAND LEA ACCESS TO EDUCATION VALUE ADDED ASSESSMENT SYSTEM (EVAAS)

SECTION 7.14.(a) The State Board of Education shall identify local school administrative units to receive funds for purchasing licenses to EVAAS diagnostic software based on criteria that shall include (i) identified need, (ii) readiness, and (iii) county wealth, as defined in the Low-Wealth Supplemental Funding Formula. The Board shall identify as many units as possible within funds available for this purpose.

SECTION 7.14.(b) Funds appropriated for EVAAS in the 2005-2006 fiscal year shall not revert, but shall be carried forward to the 2006-2007 fiscal year for expenditures for training related to expanding local school administrative units' access to the EVAAS tool. Any such funds not spent by June 30, 2007, shall revert to the General Fund.

SECTION 7.14.(c) This section becomes effective June 30, 2006.

CLARIFY DEFINITION: PUBLIC SCHOOL CAPITAL FUNDS

SECTION 7.15. G.S. 115C-546.2(d)(2)a. reads as rewritten:

- "a. "Effective county tax rate" means the actual county tax ~~rate~~ rate, including any countywide supplemental taxes levied for the benefit of public schools, multiplied by a three-year weighted average of the most recent annual sales assessment ratio studies."

NORTH CAROLINA VIRTUAL PUBLIC SCHOOL

SECTION 7.16.(a) The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction

SECTION 7.16.(b) The Director of NCVPS will ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the NC Virtual Public School Program, eliminating course duplication. The Director shall report on the proposed consolidation and operating plan for 2007-2008 to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division no later than January 15, 2007. Consolidation will be completed by June 30, 2007. Notwithstanding G.S 143-23, the State Board of Education may move funds within the budget to implement the consolidation.

SECTION 7.16.(c) Subsequent to course consolidation, the Director will prioritize e-learning course offerings for students residing in rural and low-wealth county LEAs, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

SECTION 7.16.(d) The State Board of Education shall develop an allotment formula for funding e-learning, effective in the 2007-2008 fiscal year. In developing the formula, the Board shall consider, at a minimum, the following:

- (1) The number of students in average daily membership (ADM) projected to enroll in e-learning,

- (2) The projected cost of fees for e-learning courses,
- (3) The extent to which projected enrollment in e-learning courses affects funding required for other allotments that are based on ADM.

SECTION 7.16.(e) Any funds appropriated in this act for the NCVPS program that are not expended in fiscal year 2006-2007 shall be carried forward for expenditure in fiscal year 2007-2008. Any such funds that remain unexpended on June 30, 2008, shall revert to the General Fund.

DISTANCE EDUCATION

SECTION 7.17. Notwithstanding G.S. 143-23, the State Board of Education may use monies from the State Public School Fund in the 2006-2007 fiscal year only to pay for the additional costs associated with an increased number of registration fees for students enrolling in Distance Education courses.

TRANSFER MORE AT FOUR PROGRAM AND OFFICE OF SCHOOL READINESS TO THE DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 7.18.(a) The More at Four program and the Office of School Readiness are transferred from the Office of the Governor to the Department of Public Instruction effective July 1, 2006. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6. The Office of School Readiness will provide oversight to the More at Four program and other related early childhood and prekindergarten education experiences. An Executive Director for the Office of School Readiness will be appointed by the State Board of Education.

SECTION 7.18.(b) Section 10.67(a) of S.L. 2005-276 is repealed.

SECTION 7.18.(c) Section 10.67(b) of S.L. 2005-276 reads as rewritten:

"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 research-based and/or built on sound instructional theory ~~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 a 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 and 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 and 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 7.18.(d) Section 10.67(c) of S.L. 2005-276 reads as rewritten:

"SECTION 10.67.(c) ~~The Department of Health and Human Services~~ Department of Public Instruction shall implement a plan to expand plan for expansion of the "More at Four" program standards 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 "NC Prekindergarten Program Standards" initiative shall recognize four- and five-star-rated centers that choose to apply and meet equivalent "More at Four" program standards as high quality pre-k classrooms. Classrooms meeting these standards shall, have at a minimum, receive curricula and access to training and workshops for "More at Four" programs. Whenever expansion slots are available, these classrooms shall have first priority to receive them, 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.S., 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,~~ January 31 of each year, 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 7.18.(e) Section 10.67(d) of S.L. 2005-276 reads as rewritten:

"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~~ The Department of Public Instruction shall submit a report by February 1, 2007, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on ~~Health and Human Services Education,~~ the House of Representatives Appropriations Subcommittee on ~~Health and Human Services Education,~~ 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)(5)~~ A comprehensive cost analysis of the program, including the cost per child served by the program.
- ~~(7)(6)~~ The plan for expansion of "More at Four" through existing resources status of the NC Prekindergarten initiatives as outlined in this section."

SECTION 7.18.(f) Section 10.67(e) of S.L. 2005-276 reads as rewritten:

"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 7.18.(g) Section 10.67(f) of S.L. 2005-276 reads as rewritten:

"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~~ 2005-2006 fiscal year. Support of existing four-year-old classrooms with "More at Four" program funding shall be permitted when current funding is eliminated, reduced or redirected as required to meet other specified federal or State educational mandates."

SECTION 7.18.(h) Section 10.67(g) of S.L. 2005-276 is repealed.

SECTION 7.18.(i) G.S. 115C-242(1) reads as rewritten:

- "(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit.

Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program or any More at Four program which is housed in a building owned and operated by a local school administrative unit where school is being conducted may be transported on public school buses, and any additional costs associated with such so long as the contractual arrangements shall be incurred by the benefitting Head Start or More at Four program made ~~cause no extra expense to the State~~: Provided further, that children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education."

ADMINISTRATIVE FUNDING FOR TEACHING FELLOWS PROGRAM

SECTION 7.19.(a) G.S. 115C-363.23A(f) reads as rewritten:

"(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund shall be used for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments.

~~The~~ With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used by the Public School Forum, as administrator for the Teaching Fellows Program, ~~may use up to one hundred fifty thousand dollars (\$150,000) annually from the fund balance for costs associated with administration of the Teaching Fellows Program."~~

SECTION 7.19.(b) The Public School Forum, as administrator for the Teaching Fellows Program, may use up to eight hundred ten thousand dollars (\$810,000) for the 2006-2007 fiscal year from the balance in the revolving fund established in G.S. 115C-363.23A(f) for costs associated with administration of the Teaching Fellows Program. The funding provided for administration of the Teaching Fellows Program in this subsection shall be used to meet current administrative expenses of the Program, expand minority recruitment initiatives, and expand the Program to up to four additional campuses using a merit-based selection process developed by the North Carolina Teaching Fellows Commission.

The Teaching Fellows Program shall report to the Joint Legislative Education Oversight Committee by March 15, 2007, on:

- (1) Actual expenditures for the 2005-2006 fiscal year and budgeted expenditures for the 2006-2007 fiscal year for administration of the Program;

- (2) Initiatives to recruit minorities to the Program; and
- (3) The additional campuses selected to participate in the Program and the selection process.

REFUND OF LOCAL SALES AND USE TAXES TO A LOCAL SCHOOL ADMINISTRATIVE UNIT

SECTION 7.20.(a) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holiday contained in G.S. 105-164.13C, and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and 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 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 the 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 entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 7.20.(b) Section 7.51(c) of S.L. 2005-276, as amended by Section 7 of S.L. 2005-345, reads as rewritten:

"**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. 105-164.14(c)(2b) and (2c) during the 2005-2006 fiscal year for State sales and use taxes only 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."

SECTION 7.20.(c) This section becomes effective July 1, 2005, and applies to sales made on or after that date.

SALARY SUPPLEMENT FOR MATH AND SCIENCE TEACHERS PILOT PROGRAM

SECTION 7.21.(a) Funds in the amount of five hundred fifteen thousand one hundred fifteen dollars (\$515,115) are appropriated in this act for a pilot program providing for a salary supplement for newly hired teachers (as defined by the State Board of Education) of mathematics or science at the middle or high school level. The State Board of Education shall develop the pilot program and select three local school administrative units to participate in the pilot program. In selecting the units, the Board shall target low-performing local school administrative units and take geographical

diversity into account. Selected local school administrative units shall use salary supplement funds for newly hired teachers at low-performing schools.

Each of the pilot units shall receive funds to provide for a salary supplement of fifteen thousand dollars (\$15,000) to up to 10 newly hired teachers at the middle or high school level who have nonprovisional certification in and are teaching in one or more of the following areas of teacher certification:

- (1) Middle grades mathematics,
- (2) Middle grades science,
- (3) Mathematics (9-12),
- (4) Science (9-12),
- (5) Earth science (9-12),
- (6) Biology (9-12),
- (7) Physics (9-12), and
- (8) Chemistry (9-12).

SECTION 7.21.(b) In accordance with G.S. 115C-325 and by way of clarification, it shall not constitute a demotion as that term is defined in G.S. 115C-325(a)(4) if:

- (1) A teacher who receives a salary supplement pursuant to subsection (a) of this section is reassigned to a school at which there is no such salary supplement;
- (2) A teacher who receives a salary supplement pursuant to subsection (a) of this section moves to a different local school administrative unit; or
- (3) A teacher receives a salary supplement pursuant to subsection (a) of this section and the salary supplement is subsequently discontinued or reduced.

SECTION 7.21.(c) Funds not needed to pay for salary supplements shall revert to the General Fund.

SECTION 7.21.(d) The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the design of the pilot program prior to implementation. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the implementation of the pilot program by January 15, 2007.

STUDY THE COMPENSATION OF SCHOOL PSYCHOLOGISTS WITH NATIONAL CERTIFICATION

SECTION 7.22. The State Board of Education shall study the adequacy of the compensation of school psychologists who are designated as Nationally Certified School Psychologists by the National School Psychology Certification Board. In the course of the study, the State Board of Education shall consider (i) whether these school psychologists should be compensated at the same level as teachers who are certified by the National Board for Professional Teaching Standards (NBPTS) and (ii) the cost of compensating them at that level.

The State Board of Education shall report the results of its study to the Joint Legislative Education Oversight Committee prior to January 15, 2007.

PART VIII. COMMUNITY COLLEGES

SALARIES OF COMMUNITY COLLEGE FACULTY AND PROFESSIONAL STAFF

SECTION 8.1.(a) Section 8.3 of S.L. 2005-276 is amended by adding a new subsection to read:

"SECTION 8.3.(b1) For the 2006-2007 school year, the minimum salaries for nine-month, full-time, curriculum community college faculty shall be as follows:

<u>Education Level</u>	<u>Minimum Salary</u> <u>2006-2007</u>
<u>Vocational Diploma/Certificate or Less</u>	<u>\$31,728</u>
<u>Associate Degree or Equivalent</u>	<u>\$32,195</u>
<u>Bachelors Degree</u>	<u>\$34,220</u>
<u>Masters Degree or Education Specialist</u>	<u>\$36,016</u>
<u>Doctoral Degree</u>	<u>\$38,607</u>

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 8.1.(b) Section 8.3(g) of S.L. 2005-276 reads as rewritten:

"SECTION 8.3.(g) ~~Funds~~ For the 2005-2006 fiscal year, 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. For the 2006-2007 fiscal year, funds appropriated in this act for salary increases shall be used to increase faculty and professional staff annual salaries by six percent (6%). 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."

USE OF FUNDS APPROPRIATED FOR ISOTHERMAL COMMUNITY COLLEGE

SECTION 8.2. Funds appropriated for composite testing at Isothermal Community College and not used for that purpose may be used to purchase equipment for the Lifelong Learning Center located at Isothermal Community College.

USE OF FUNDS FOR THE COLLEGE INFORMATION SYSTEM PROJECT

SECTION 8.3.(a) Funds appropriated to the Community Colleges System Office for the College Information System Project shall not revert at the end of the 2005-2006 fiscal year but shall remain available until expended.

SECTION 8.3.(b) Notwithstanding G.S. 143-23, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management, in consultation with the Office of Information Technology Services, and after consultation with the Joint Legislative Commission on Governmental Operations, use funds appropriated in this act for the College Information System Project to create a maximum of 20 positions or incur expenditures necessary to transfer the maintenance and administration of the College Information System Project from the vendor to the System Office.

SECTION 8.3.(c) 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 8.3.(d) Subsection (a) of this section becomes effective June 30, 2006.

CARRYFORWARD FOR EQUIPMENT

SECTION 8.4.(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 ten million dollars (\$10,000,000) of the operating funds that were not reverted in fiscal year 2005-2006 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 8.4.(b) This section becomes effective June 30, 2006.

NC COMMUNITY COLLEGE SYSTEM MAY USE STATE FUNDS IN LIEU OF FEDERAL FUNDS DUE TO FEDERAL MANDATES

SECTION 8.5. Notwithstanding G.S. 143-23, the Community Colleges System Office may use State literacy funds to fund the State administration of the GED office. Federal funds previously used to support the State administration functions shall be reallocated to the colleges.

REPORT ON THE NCCCS BIONETWORK

SECTION 8.6. The Community Colleges System Office shall report by November 1, 2006, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division on the implementation of the NCCCS BioNetwork. This report shall include an explanation of the BioNetwork's activities, accomplishments, and expenditures.

STUDY OF NEW AND EXPANDING INDUSTRY TRAINING

SECTION 8.7. The Office of State Budget and Management shall conduct a study to analyze and evaluate the New and Expanding Industry Training program of the North Carolina Community College System. This study shall examine the companies served, the number of times each company has been served, the number of jobs created, the length of time the company has remained in North Carolina after receiving New and Expanding Industry Training funds, and whether the company has maintained employment levels at the same level promised when training was received. The findings of the study shall be reported to the Joint Legislative Education Oversight Committee no later than April 1, 2007.

MATCHING REQUIREMENT FOR BOND FUNDS

SECTION 8.8. Section 3(d) of S.L. 2000-3 reads as rewritten:

"Section 3.(d) If the State Board of Community Colleges determines that a community college has not met its matching requirements by July 1, ~~2006~~2007, with respect to a capital improvement project for which bond proceeds are allocated in this act, the Board shall certify that fact to the State Treasurer by October 1, ~~2006~~2007. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, ~~2006~~2007, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be

used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

- (1) The State Board of Community Colleges shall generate, by October 1, ~~2006~~,2007, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including actual and projected enrollment, space requirements, current capacity, construction costs, and any other factors the State Board considers relevant.
- (2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:
 - a. No projected allocation shall be made for a community college that the Board certified in accordance with this subsection had failed to meet a matching requirement.
 - b. No more than four million dollars (\$4,000,000) shall be allocated to a single community college.
 - c. Funds shall not be allocated for more than one project per community college.
- (3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

COMMUNITY COLLEGE LOW-WEALTH FUNDING

SECTION 8.9.(a) G.S. 115D-31.3 is amended by adding a new subsection to read:

"(j) Use of funds in low-wealth counties. – Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and 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 of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year; and

- (3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended."

SECTION 8.9.(b) This section becomes effective June 30, 2006.

COMMUNITY COLLEGE FACILITIES AND EQUIPMENT

SECTION 8.10.(a) Of the funds appropriated to the Community Colleges System Office for facilities and equipment needs, the sum of fifteen million dollars (\$15,000,000) shall be used to create the Community College Facilities and Equipment Fund. This Fund shall be used for the purpose of awarding grants to community colleges for facility and equipment needs. The Community Colleges System Office, in consultation with the State Board of Community Colleges shall develop a competitive grant application process and guidelines for facility or equipment needs. The State Board of Community Colleges shall award grants on the merit of the applications received. No individual grant may exceed the sum of one million dollars (\$1,000,000).

These grants shall be awarded on a matching basis of one State dollar for every one non-State dollar.

SECTION 8.10.(b) Beginning September 1, 2006, the Community Colleges System Office shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each grant that was awarded: (i) the name of the community college; (ii) a description of the project; (iii) the project location; (iv) the cost-benefit analysis conducted by the Community Colleges System Office and the rationale for awarding the grant; and (v) the amount of the grant.

SECTION 8.10.(c) The Community Colleges System Office shall develop guidelines related to the administration of the Community College Facilities and Equipment Fund and to the selection of projects to receive grants from the Fund. At least 20 days before the effective date of any guidelines or nontechnical amendments to guidelines, the System Office must publish the proposed guidelines on the System Office's Web site and provide notice to persons who have requested notice of proposed guidelines. In addition, the State Board shall 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 subsection, 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.

SECTION 8.10.(d) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

- (14) The Community Colleges System Office in developing guidelines for the Community College Facilities and Equipment Fund."

PART IX. UNIVERSITIES**UNC-NCCCS 2+2 E-LEARNING INITIATIVE**

SECTION 9.1. The University of North Carolina and Community Colleges System Office shall report by September 1, 2006, to the Joint Legislative Education Oversight Committee, the Office of State Budget and Management, and the Fiscal Research Division of the General Assembly on the implementation of the UNC-NCCCS 2+2 E-Learning Initiative. This report shall include:

- (1) The courses and programs within the 2+2 E-Learning Initiative;
- (2) The total number of prospective teachers that have taken or are taking part in this initiative to date broken down by the current academic period and each of the previous academic periods since the program's inception;
- (3) The total number of teachers currently in the State's classroom, by local school administrative unit, who have taken part in this initiative;
- (4) The change in the number of teachers available to schools since the program's inception;
- (5) The qualitative data from students, teachers, local school administrative unit personnel, university personnel, and community college personnel as to the impact of this initiative on our State's teaching pool; and
- (6) An explanation of the expenditures and collaborative programs between the North Carolina Community College System and The University of North Carolina, including recommendations for improvement.

TEACHER EDUCATION PROGRAM ENROLLMENT PLANS

SECTION 9.2. 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. The University of North Carolina General Administration shall obtain plans from each constituent institution 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 General Administration believes will achieve those results. The University of North Carolina General Administration shall report back to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2006, on each constituent institution's plan. No later than March 31, 2007, The University of North Carolina General Administration shall submit a report on progress towards meeting this priority for the 2007-2008 academic year, based on each constituent institution's current students in the education programs, and the students who have been accepted for the 2007-2008 fiscal year who are enrolling in the education programs. The report shall also explain the distribution of enrollment growth funds by specific initiative.

NORTH CAROLINA IN THE WORLD PROJECT

SECTION 9.3. In collaboration with the State Board of Education and the Department of Commerce, the NC Center for International Understanding shall develop a plan to ensure that public K-12 international education efforts such as teacher and student exchanges, curriculum development, and other initiatives for students, teachers, and administrators are focused on key countries and regions of strategic economic interest to North Carolina. The North Carolina Center for International Understanding shall report to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee on the activities and accomplishments of the two hundred thousand dollar (\$200,000) nonrecurring appropriation for North Carolina in the World Project no later than March 31, 2007.

A+ SCHOOLS – BUDGET TECHNICAL CORRECTION

SECTION 9.3A. Recurring funds in the amount of one hundred thousand dollars (\$100,000) appropriated to the Department of Public Instruction for the 2006-2007 fiscal year in S.L. 2005-276 as pass-through funds for A+ Schools shall be transferred to the Board of Governors of The University of North Carolina to provide pass-through funds for A+ Schools for the same purpose of providing support for the program that assists schools in implementing comprehensive school reform by integrating arts into the curriculum.

STUDY THE FEASIBILITY OF ADDING NORTH CAROLINA WESLEYAN COLLEGE TO UNC SYSTEM

SECTION 9.4.(a) The Board of Governors of The University of North Carolina shall study the feasibility of making North Carolina Wesleyan College a constituent institution of The University of North Carolina. The study shall include all of the following:

- (1) **Mission.** – The Board of Governors shall evaluate the potential missions of the campus that would meet the academic and economic needs of the region, the State, and of the University System. The Board of Governors shall take into account the need to avoid duplication of curriculum and programs at other campuses, particularly those within the same geographic area, unless the need for duplication is warranted. The Board of Governors shall seek recommendations, suggestions, and comments from community leaders, educational experts, and business leaders in defining the mission of the new campus. Particular focus shall be placed on utilizing the campus in a manner that addresses both the economic and educational challenges of the region in a unique and focused manner, such as in the areas of science, technology, education, and economic development.
- (2) **Cost.** – The Board of Governors shall analyze the potential operating costs of the campus. Factors such as the mission, staff and faculty salaries, benefits, total faculty and staff levels, total projected student enrollment, facility needs, and tuition rates shall be taken into account.
- (3) **Facility Needs.** – The Board of Governors shall consider what additional facility needs there may be, taking into account the proposed mission of the campus. Examples of those needs may be lab facility upgrades, new buildings to house an expanded student population, and associated infrastructure expansion.

- (4) Asset Transfer. – The Board of Governors shall obtain legal and financial analyses to determine if there are any restrictions attached to any of the College's assets (title to property, gifts to endowment, assets purchased with restricted grant funds, etc.) that would prohibit the transfer of the assets to the State. If there are restrictions, then the analyses shall also include the steps necessary to lift the restrictions and the costs of obtaining a clear title.
- (5) Liability Analysis. – The Board of Governors shall also obtain a legal analysis to determine whether there are pending liabilities against the campus or reasonably foreseeable future liabilities against the campus. If there are such liabilities, the legal analysis shall also address the action needed to avoid transfer of any liability to the State.
- (6) Transition of Current Students/Programs. – The Board of Governors shall consider how best to handle the transition of the currently enrolled student population, both on and off campus, into continuing or new curriculum programs during the conversion period.
- (7) Personnel. – The Board of Governors shall assess the employment status of current personnel to determine what, if any, contractual and other employment issues may arise in the conversion.
- (8) Legislative Action. – The Board of Governors shall determine the legislative action and statutory amendments needed to authorize and implement the conversion.

SECTION 9.4.(b) Of the funds available to the Board of Governors of The University of North Carolina, the sum of fifty thousand dollars (\$50,000) for the 2006-2007 fiscal year shall be used to conduct the study required by this act.

GRADUATE NURSE SCHOLARSHIP PROGRAM FOR FACULTY PRODUCTION

SECTION 9.6. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 9H.

"Graduate Nurse Scholarship Program for Faculty Production.

"§ 90-171.95. Graduate Nurse Scholarship Program for Faculty Production established; administration.

(a) There is established the Graduate Nurse Scholarship Program for Faculty Production. The North Carolina Nursing Scholars Commission shall determine selection criteria, methods of selection, and shall select recipients of scholarship loans made under the Graduate Nurse Scholarship Program for Faculty Production.

(b) The Graduate Nurse Scholarship Program for Faculty Production shall be used to provide the following:

- (1) A scholarship loan for up to two years in the amount of fifteen thousand dollars (\$15,000) per year, per recipient, to students enrolled in a masters degree program in nursing education or any other area of the nursing field that would permit them to become a nursing instructor at a North Carolina community college or university.
- (2) A scholarship loan for up to three years in the amount of fifteen thousand dollars (\$15,000) per year, per recipient, to students enrolled in a doctoral degree program in nursing education or any other area of

the nursing field that would permit them to become a nursing instructor at a North Carolina community college or university.

The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans.

(c) If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in an eligible 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.

(d) The Commission shall adopt stringent standards, which may include minimum grade point average, scholastic aptitude test scores, and other standards deemed appropriate by the Commission, to ensure that only the best potential students receive loans under the Graduate Nurse Scholarship Program for Faculty Production. Standards adopted by the Commission shall include provisions for ensuring that the qualifications of applicants who are or would be nontraditional students are considered fairly in providing them with opportunities to compete for the loans. Loans under the Graduate Nurse Scholarship Program for Faculty Production shall be awarded only to applicants who meet the standards set by the Commission and who agree to teach in a North Carolina public or private nursing program upon completion of the nursing education program supported by the loan.

(e) The Commission shall develop and administer the Graduate Nurse Scholarship Program for Faculty Production in cooperation with nursing schools at institutions approved by the Commission and the North Carolina Board of Nursing. The Graduate Nurse Scholarship Program for Faculty Production shall provide for participants to be exposed to a range of extracurricular activities while in school, which activities shall be aimed at instilling in students a strong motivation to remain in the practice of nursing education and to provide leadership for the nursing profession.

(f) The Commission shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in nursing to apply for the Graduate Nurse Scholarship Program for Faculty Production.

(g) Upon the naming of recipients of loans from the Graduate Nurse Scholarship Program for Faculty Production, the Commission shall inform the State Education Assistance Authority (SEAA) of its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rulemaking, dissemination of information to the public, distribution and receipt of applications for scholarship loans, and the functions necessary for the execution, payment, and enforcement of promissory notes required under this Article.

"§ 90-171.96. Terms of loans; receipt and disbursement of funds.

(a) All scholarship loans shall be evidenced by notes made payable to the State Education Assistance Authority that bear interest at the rate of ten percent (10%) per year beginning 90 days after completion of the nursing education program, or 90 days after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated upon the recipient's withdrawal from school or by the recipient's failure to meet the standards set by the Commission.

(b) The State Education Assistance Authority shall forgive the loan if, within seven years after graduation from a nursing education program, the recipient teaches in

a public or private nursing education program in a public or private educational institution in North Carolina for one year for every year a scholarship loan was provided. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within 10 years. The Authority may provide for accelerated repayment and for less than full-time employment options to encourage the practice of nursing education in either geographic or nursing specialty shortage areas. The Authority shall adopt specific rules to designate these geographic areas and these nursing specialty shortage areas, upon recommendations of the North Carolina Center for Nursing. The North Carolina Center for Nursing shall base its recommendations on objective information provided by interested groups or agencies and upon objective information collected by the Center. The Authority may forgive the scholarship loan if it determines that it is impossible for the recipient to teach in a public or private nursing program in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within 10 years following graduation or termination of enrollment in a nursing education program.

(c) All funds appropriated to or otherwise received by the Graduate Nurse Scholarship Program for Faculty Production for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall be placed in a revolving fund. This revolving fund may be used only for scholarship loans granted under the Graduate Nurse Scholarship Program for Faculty Production."

MANAGEMENT FLEXIBILITY TO REORGANIZE BUDGET CODE 16012 UNC BOARD OF GOVERNORS RELATED EDUCATIONAL PROGRAMS

SECTION 9.7. Notwithstanding G.S. 143-23, for the 2006-2007 fiscal year, the General Administration of The University of North Carolina and the State Educational Assistance Authority shall, with the approval of the Office of State Budget and Management, reorganize budget code 16012, UNC Board of Governors Related Educational Programs, so that the budget reflects and segregates each specific program individually. The Office of State Budget and Management shall work with The University of North Carolina General Administration and the State Educational Assistance Authority to ensure that each program represented in code 16012 is identified and budgeted separately.

TRANSFERS OF APPROPRIATION

SECTION 9.8. G.S. 116-30.2(a) reads as rewritten:

"(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are

requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions."

NURSING SCHOLARS PROGRAM MODIFICATION

SECTION 9.9.(a) G.S. 90-171.61 reads as rewritten:

"§ 90-171.61. Nursing Scholars Program established; administration.

(a) There is established the Nursing Scholars Program. The North Carolina Nursing Scholars Commission shall determine selection criteria, methods of selection, and shall select recipients of scholarship loans made under the Nursing Scholars Program.

(b) The Nursing Scholars Program shall be used to provide the following:

- (1) ~~A four-year scholarship loan~~Scholarship loans in the amount ~~amounts~~ of up to ~~of five thousand dollars (\$5,000)~~six thousand five hundred dollars (\$6,500) per year, for each scholarship of no more than four years per recipient, to North Carolina ~~high school seniors or other persons~~residents interested in preparing to become a registered nurse ~~nurses~~ through a ~~associate or baccalaureate degree program~~programs or through diploma programs.
- (2) ~~A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, to persons interested in preparing to be a registered nurse through an associate degree nursing program or a diploma nursing program.~~
- (3) ~~A two-year scholarship loan in the amount of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate nursing study for college juniors or community college graduates interested in preparing to be a registered nurse.~~
- (4) ~~A two-year scholarship loan of three thousand dollars (\$3,000) per year, per recipient, for two years of baccalaureate study in nursing for registered nurses who do not hold a baccalaureate degree in nursing.~~
- (5) ~~A two-year scholarship loan~~Scholarship loans of six thousand ~~five hundred~~ dollars ~~(\$6,000)~~(\$6,500) per year, per recipient, for two years of study leading to a master of science in nursing degree for ~~people~~ residents already holding a baccalaureate degree in nursing.

~~In addition to the awarding scholarship loans awarded pursuant to subdivisions (1) through and (5) of this subsection, the Commission may award pro rata scholarship loans to recipients enrolled at least half-time in study to become registered nurses or to attain a master of science in nursing degree.~~in study leading to a master of science in nursing degree who already hold a baccalaureate degree in nursing and to recipients enrolled at least half-time in study leading to a baccalaureate degree in nursing who already are licensed as registered nurses. In awarding all scholarship loans, the Commission shall give priority to full-time students over part-time students. The State Education Assistance Authority shall adopt specific rules to regulate scholarship loans to part-time ~~master of science in nursing students and part-time baccalaureate degree students.~~students.

Within current funds available or with any additional funds provided by the General Assembly for this purpose, the Commission may set aside slots for scholarship loans prescribed by ~~subdivisions (1) and (2)~~ subdivision (1) of this subsection to enable licensed practical nurses to become registered nurses. The State Education Assistance Authority shall adopt specific rules to regulate these scholarship loans.

(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.

(c) The Commission shall adopt stringent standards, which may include minimum grade point average, scholastic aptitude test scores, and other standards deemed appropriate by the Commission, to ensure that only the best potential students receive and retain loans under the Nursing Scholars Program. Standards adopted by the Commission shall include provisions for ensuring that the qualifications of applicants who are or would be nontraditional students are considered fairly in providing them with opportunities to compete for the loans. Loans under the Nursing Scholars Program shall be awarded only to applicants who meet the standards set by the Commission and who agree to practice nursing in North Carolina upon completion of the nursing education program supported by the loan.

(d) The Commission shall develop and administer the Nursing Scholars Program in cooperation with nursing schools at institutions approved by the Commission and the North Carolina Board of Nursing. The Nursing Scholars Program shall provide for participants to be exposed to a range of extracurricular activities while in school, which activities shall be aimed at instilling in students a strong motivation to remain in the practice of nursing and to provide leadership for the nursing profession.

(e) The Commission may form regional review committees within North Carolina to assist it in identifying the best high school seniors and other applicants for the program. The Commission and the review committees shall make an effort to identify and encourage minority students and students who may not otherwise consider a career in nursing to apply for the Nursing Scholars Program.

(f) Upon the naming of recipients of loans from the Nursing Scholars Program, the Commission shall inform the State Education Assistance Authority (SEAA) of its decisions. The SEAA shall perform all of the administrative functions necessary to implement this Article, which functions shall include: rule-making, dissemination of information to the public, distribution and receipt of applications for scholarship loans, and the functions necessary for the execution, payment, and enforcement of promissory notes required under this Article."

SECTION 9.9.(b) This section applies to all scholarship loans awarded or renewed on or after July 1, 2006.

UNC BOARD OF GOVERNORS MEDICAL AND DENTAL SCHOLARSHIPS

SECTION 9.10.(a) Section 9.9(a) of S.L. 2005-276 reads as rewritten:

"**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. An extension of the seven-year period for satisfaction of the service requirements for the scholarship loan may be granted subject to the approval on the finding of extenuating circumstances by the State Education Assistance Authority. Such extenuating circumstances may include, but are not be limited to, participation in a dental residency program. 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 9.10.(b) Section 9.10(a) of S.L. 2005-276 reads as rewritten:

"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. An extension of the seven-year period for satisfaction of the service requirements of the scholarship loan may be granted subject to the approval of the State Education Assistance Authority. Such extenuating circumstances may include, but not be limited to, participation in a medical residency program. 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.(c) This section is effective when it becomes law and applies to all scholarship loans issued after July 1, 2005.

NC SCHOOL OF SCIENCE AND MATH/HIGH SCHOOL CONSTITUENT INSTITUTION

SECTION 9.11.(a) G.S. 116-2 reads as rewritten:

"§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

- (1) "Board" means the Board of Governors of the University of North Carolina.
- (2) "Board of trustees" means the board of trustees of a constituent institution.
- (3) "Chancellor" means the chancellor of a constituent institution.
- (4) "Constituent institution" or "institution" means one of the 16 public ~~senior institutions,~~ institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State ~~University.~~ University, and the constituent high school, the North Carolina School of Science and Mathematics.
- (5) "President" means the President of the University of North Carolina.
- (6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1."

SECTION 9.11.(b) G.S. 116-4 reads as rewritten:

"§ 116-4. Constituent institutions of the University of North Carolina.

~~On July 1, 1972, the~~ The University of North Carolina shall be composed of the following ~~institutions:~~ institutions of higher education: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University,

Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics."

SECTION 9.11.(c) G.S. 116-12 reads as rewritten:

"§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. All property of whatsoever kind and all rights and privileges held by the Board of Trustees of the North Carolina School of Science and Mathematics, as said property, rights and privileges may exist immediately prior to July 1, 2007, shall be and hereby are, effective July 1, 2007, transferred to and vested in the Board of Governors of The University of North Carolina. All obligations of whatsoever kind of the Board of Trustees of the North Carolina School of Science and Mathematics as said obligations may exist immediately prior to July 1, 2007, shall be, and the same hereby are, effective July 1, 2007, transferred to and assumed by the Board of Governors of The University of North Carolina. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the

intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof."

SECTION 9.11.(d) G.S. 116-17 reads as rewritten:

"§ 116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees.

Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, ~~colleges-colleges, constituent institutions,~~ and other institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, ~~colleges-colleges, constituent institutions,~~ and other institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions ~~of higher learning~~ which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and ~~institutions of higher learning, institutions.~~ A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions ~~of higher learning~~ and on forms prepared by said governing boards. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes.

In lieu of the annuity and related contracts provided for under this section, interests in custodial accounts pursuant to Section 401(f), Section 403(b)(7), and related sections of the Internal Revenue Code of 1986 as amended may be purchased for the benefit of qualified employees under this section with the funds derived from the reduction in the salaries of such employees."

SECTION 9.11.(e) The catch line of G.S. 116-30.2 reads as rewritten:

"§ 116-30.2. Appropriations to special responsibility constituent institutions and to the North Carolina School of Science and Mathematics-institutions."

SECTION 9.11.(f) G.S. 116-30.2(b) is repealed.

SECTION 9.11.(g) G.S. 116-31(d) reads as rewritten:

"(d) ~~Effective-Except as provided in G.S. 116-65, effective July 1, 1973,~~ each of the 16 ~~constituent~~ institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

- (1) Eight elected by the Board of Governors,
- (2) Four appointed by the Governor, and

(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233."

SECTION 9.11.(h) G.S. 116-40.22(c) reads as rewritten:

"(c) Tuition and Fees. – Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. The institution shall retain any tuition and fees set pursuant to this subsection for use by the institution. Notwithstanding this subsection, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly."

SECTION 9.11.(i) G.S. 116-143 reads as rewritten:

"§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

The Board of Governors of ~~the~~The University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions of higher education enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished. Notwithstanding this section, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of ~~the~~The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of ~~the~~The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of ~~the~~The University of North Carolina may during the period of normal employment enroll for not more than one course per semester in ~~the~~The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and

further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

SECTION 9.11.(j) G.S. 116-230.1 reads as rewritten:

"§ 116-230.1. **Policy.**

It is hereby declared to be the policy of the State to foster, encourage, promote, and provide assistance in the development of skills and careers in science and mathematics among the people of the State."

SECTION 9.11.(k) G.S. 116-231 reads as rewritten:

"§ 116-231. **Reestablishment of the North Carolina School of Science and Mathematics as ~~an Affiliated School~~ a Constituent High School of The University of North Carolina.**

The North Carolina School of Science and Mathematics is hereby reestablished, as ~~an affiliated~~ a constituent high school of The University of North Carolina, and shall be governed by the Board of Governors as prescribed in this Chapter and a Board of Trustees as prescribed in this Article."

SECTION 9.11.(l) G.S. 116-232 reads as rewritten:

"§ 116-232. **Purposes.**

The purposes of the School shall be to foster the educational development of North Carolina high school students who are academically talented in the areas of science and mathematics and show promise of exceptional development and global leadership through participation in a residential educational setting emphasizing instruction in the areas of science and mathematics; ~~to develop, evaluate, and disseminate experimental instructional programs; and to serve all schools of the State through research and outreach activities;~~ and to provide instruction, methods, and curricula designed to improve teaching and learning in North Carolina and the nation with an emphasis on distance education and programs that expand pathways for students into careers in science and mathematics."

SECTION 9.11.(m) The introductory language of G.S. 116-233(a) reads as rewritten:

"(a) ~~There~~ Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of 27 members as follows:

..."

SECTION 9.11.(n) G.S. 116-234 reads as rewritten:

"§ 116-234. **Board of Trustees; meetings; rules of procedure; officers.**

(a) The Board of Trustees shall meet at least ~~four~~ three times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) ~~The~~ Notwithstanding the provisions of G.S. 116-32, the Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6."

SECTION 9.11.(o) The catch line of G.S. 116-235 reads as rewritten:

"§ 116-235. Board of Trustees; **additional powers and duties.**"

SECTION 9.11.(p) G.S. 116-235 is amended by adding a new subsection to read:

"(a) In addition to the powers enumerated in Chapter 116, Article I, Part 3, the Board of Trustees shall have the powers and duties set out in this section."

SECTION 9.11.(q) G.S. 116-235(a) reads as rewritten:

"(a)(a1) Academic Program. –

- (1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.
- (2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the instructional day, and the number of instructional days in each term."

SECTION 9.11.(r) G.S. 116-235(b) reads as rewritten:

"(b) Students. –

- (1) Admission of Students. – The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be either a legal resident of the State, as defined by G.S. 116-143.1(a)(1), or a student whose parent is an active duty member of the armed services, as defined by G.S. 116-143.3(2), who is abiding in this State incident to active military duty at the time the application is submitted, provided the student shares the abode of that parent; eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified ~~rising high school juniors~~ applicants is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of ~~rising high school juniors~~ qualified applicants offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.
- (2) School Attendance. – Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 1 misdemeanor. The ~~Director~~ Chancellor of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary

absences, maintenance of attendance records, and attendance counseling.

- (3) Student Discipline. – Rules of conduct governing students of the School shall be established by the Board of Trustees. The ~~Director, Chancellor,~~ other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

SECTION 9.11.(s) G.S. 116-235(c) through G.S. 116-235(h) is repealed.

SECTION 9.11.(t) G.S. 116-236 is repealed.

SECTION 9.11.(u) G.S. 116-237 is repealed.

SECTION 9.11.(v) G.S. 116-238 is repealed

SECTION 9.11.(w) G.S.66-58(c)(3) reads as rewritten:

"(c) The provisions of subsection (a) shall not prohibit:

...

- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by ~~public postsecondary educational~~ constituent institutions of The University of North Carolina of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that, notwithstanding this subsection, profits from a campus store operated by the endowment of the North Carolina School of Science and Mathematics are used exclusively for student activities, athletics, and other programs to enhance student life. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina."

SECTION 9.11.(x) G.S. 66-58(g) is repealed.

SECTION 9.11.(y) G.S. 126-5(c1)(8) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...

- (8) Instructional and research staff, physicians, and dentists of The

University of North Carolina, including the faculty of the
North Carolina School of Science and Mathematics.

..."

SECTION 9.11.(z) G.S. 126-5(c1)(11) is repealed.

SECTION 9.11.(aa) RESERVED

SECTION 9.11.(bb) RESERVED

SECTION 9.11.(cc) G.S. 143-597(a) is amended by adding a new subdivision to read:

"(7) The North Carolina School of Science and Mathematics."

SECTION 9.11.(dd) This section becomes effective July 1, 2007.

EXPAND TUITION WAIVER PROGRAM FOR UNC FACULTY & STAFF

SECTION 9.12. G.S. 116-143 reads as rewritten:

"§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

(a) The Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

(b) In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of the University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of the University of North Carolina may during the period of normal employment enroll for not more than ~~one course~~ three courses per semester-year in the University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

TUITION AND CONTRACTUAL GRANTS FOR TEACHING/NURSING

SECTION 9.13.(a) G.S. 116-19 reads as rewritten:

"§ 116-19. Contracts with private institutions to aid North Carolina ~~students;~~students and licensure students; reporting requirement.

(a) In order to encourage and assist private institutions to continue to educate North Carolina ~~students;~~students and licensure students, the State Education Assistance Authority may enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the State Education Assistance Authority would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated. For purposes of this subsection, "needy North Carolina ~~students-~~students and licensure students" are those eligible students and licensure students who have financial need as determined by the institution under the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. For purposes of this subsection, "institutional methodology" means a need-analysis formula, developed by College Scholarship Service, that determines the student's ~~and-or~~ licensure student's and his or her family's capacity to pay for postsecondary education each year.

(b) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students and full-time and less than full-time licensure students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students and licensure students enrolled in off-campus programs. An "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall include in its annual report to the Joint Legislative Education Oversight Committee the information it has compiled and its findings regarding this program."

SECTION 9.13.(b) G.S. 116-20 reads as rewritten:

"§ 116-20. Scholarship and contract terms; base period.

In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students and licensure students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student and licensure student enrolled as of October 1 of any year for which

appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1997, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the State Education Assistance Authority to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students and licensure students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students and licensure students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students and licensure students may also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section."

SECTION 9.13.(c) G.S. 116-21.1 reads as rewritten:

"§ 116-21.1. Financial aid for North Carolina students and licensure students attending private institutions of higher education in North Carolina.

(a) Funds shall be appropriated each fiscal year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for aid to institutions and shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22.

(b) The funds appropriated in compliance with this section shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in the account shall be provided as scholarship funds for needy North Carolina students and licensure students during the fiscal year. Each student and licensure student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be available for the tuition grant program as defined in G.S. 116-21.2."

SECTION 9.13.(d) G.S. 116-21.2 reads as rewritten:

"§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.

(a) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to ~~students~~ persons attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the full-time undergraduate student as provided by this subsection.

(a1) The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any licensure student who is enrolled less than full-time in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only.

(b) The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance

Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is ~~an eligible student~~ eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the ~~student~~ student or licensure student.

(c) ~~In~~ Except as provided in subsection (a1) of this section, in the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of ~~the students~~ them.

(d) In the event there are not sufficient funds to provide each eligible student or licensure student with a full ~~grant~~ grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections ~~(a)-(a), (a1),~~ and (b) of this section; and
- (2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Any remaining funds shall revert to the General Fund."

SECTION 9.13.(e) G.S. 116-21.3 reads as rewritten:

"§ 116-21.3. Legislative tuition grant limitations.

(a) For purposes of this section, an "off-campus program" is any program offered for degree credit away from the institution's main permanent campus.

(b) No legislative tuition grant funds shall be expended for a program at an off-campus site of a private institution, as defined in G.S. 116-22(1), established after May 15, 1987, unless (i) the private institution offering the program has previously notified and secured agreement from other private institutions operating degree programs in the county in which the off-campus program is located or operating in the counties adjacent to that county or (ii) the degree program is neither available nor planned in the county with the off-campus site or in the counties adjacent to that county.

(c) Any member of the armed services, as defined in G.S. 116-143.3(a), abiding in this State incident to active military duty, who does not qualify as a resident for tuition purposes, as defined under G.S. 116-143.1, is eligible for a legislative tuition grant pursuant to this section if the member is enrolled as a full-time ~~student~~ undergraduate student or as a licensure student. The member's legislative tuition grant shall not exceed the cost of tuition less any tuition assistance paid by the member's employer.

(d) A legislative tuition grant authorized under ~~G.S. 116-21.2~~ G.S. 116-21.2(a) shall be reduced by twenty-five percent (25%) for any individual student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours."

SECTION 9.13.(f) G.S. 116-21.4(b) reads as rewritten:

"(b) Expenditures made pursuant to G.S. 116-19, 116-20, 116-21.1, or 116-21.2 shall not be used for any student or licensure student who:

- (1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or
- (2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years."

SECTION 9.13.(g) G.S. 116-22 is amended by adding a new subdivision to read:

"(1b) 'Licensure student' shall mean a person who:

- a. Has a bachelors degree;
- b. Is enrolled either full-time or less than full-time in a program intended to result in licensure in teaching or nursing;
- c. Attends an institution located in the State; and
- d. Qualifies as a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of The University of North Carolina and published in the residency manual of the Board."

NORTH CAROLINA RESEARCH CAMPUS AT KANNAPOLIS

SECTION 9.14.(a) The Director of the Office of State Budget and Management shall not release funds appropriated in this act to the Board of Governors of The University of North Carolina for the North Carolina Research Campus (NCRC) at Kannapolis until the President of The University of North Carolina certifies to the Director that The University System and the developers of NCRC have entered into a Memorandum of Understanding concerning the participation in and use of space at the North Carolina Research Campus that is approved by the President.

SECTION 9.14.(b) The Director of the Office of State Budget and Management shall not release funds appropriated in this act to the North Carolina Community Colleges System Office for the North Carolina Research Campus (NCRC) at Kannapolis until the President of the North Carolina Community College System certifies to the Director that the Community College System and the developers of NCRC have entered into a Memorandum of Understanding concerning the participation in and use of space at the North Carolina Research Campus that is approved by the President.

NC CENTER FOR THE ADVANCEMENT OF TEACHING

SECTION 9.15.(a) G.S. 116-74.6 reads as rewritten:

"§ 116-74.6. North Carolina Center for the Advancement of Teaching established; powers and duties of trustees.

~~The sums of five hundred thousand dollars (\$500,000) in fiscal year 1985-86 and two million dollars (\$2,000,000) in fiscal year 1986-87 that are appropriated to the Board of Governors of The University of North Carolina in Section 2 of the 1985-87 Current Operations Appropriations Act shall be used to establish the North Carolina Center for the Advancement of Teaching at Western Carolina University in Jackson County.~~ The Board of Governors of The University of North Carolina established the North Carolina Center for the Advancement of Teaching pursuant to Section 74 of S.L. 1985-479. The Center shall operate under the general auspices be a center of The

University of North Carolina Board of Governors. It shall be the function of the North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, to provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; and otherwise to offer opportunity for teachers to engage in scholarly pursuits, through a center dedicated exclusively to the advancement of teaching as an art and as a profession.

The Board of Governors of The University of North Carolina shall establish the North Carolina Center for the Advancement of Teaching Board of Trustees and shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of NCCAT."

SECTION 9.15.(b) G.S. 116-74.7 reads as rewritten:

"§ 116-74.7. **Composition of board of trustees; terms; officers.**

(a) The NCCAT Board of Trustees shall be composed of the following membership:

- (1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina ~~University~~University, or their designees;
- (2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chairman every two years from its membership. The Chairman may serve two consecutive two-year terms as chairman.

(c) ~~The chief administrative officer of NCCAT shall be a director, who shall be appointed by the NCCAT Board of Trustees.~~an executive director. The Board of Governors of The University of North Carolina shall appoint the executive director and set the compensation of the executive director on the recommendation of the President of The University of North Carolina. The President shall recommend the executive director from a list of not fewer than two names nominated by the NCCAT Board of Trustees.

The executive director shall report to and serve at the pleasure of the President of The University of North Carolina; provided that the President shall not terminate the employment of the executive director without prior consultation with the NCCAT Board of Trustees."

PRINCIPAL FELLOWS PROGRAM

SECTION 9.16.(a) G.S. 116-74.42(c) reads as rewritten:

"(c) The Principal Fellows Program shall provide a two-year scholarship loan in the amount of ~~twenty thousand dollars (\$20,000) per year, per recipient, specified in~~

subsection (c1) of this section to persons who may be eligible to be selected as school administrators in the public schools of the State by completing a full-time program in school administration in an approved program. Approved programs are those chosen by the Commission from among school administrator programs within the State. No more than 200 principal fellow scholarship loan awards shall be made in each year. The final number of scholarship loan awards per year shall be made in accordance with the Board of Governors' findings concerning the supply and demand of administrators, the State's need for school administrator candidates and within funds appropriated for the scholarship loans. Effective September 1, 1995, and in accordance with school administrator training programs established by the Board of Governors of The University of North Carolina, recipients shall be required to complete an approved full-time academic program during the first year of the scholarship loan program and a full-time internship during the second year of the program. In order to attract fellows as interns, local school administrative units may use all or part of the funds allotted for an assistant principal salary for each intern accepted by the local school administrative unit; however, interns shall not serve as assistant principals."

SECTION 9.16.(b) G.S. 116-74.42 is amended by adding a new subsection to read:

"(c1) The scholarship loan shall be thirty thousand dollars (\$30,000) per participant for the first year of participation. For the second year of participation, the amount of the scholarship loan per participant shall be sixty percent (60%) of the beginning salary for an assistant principal plus four thousand one hundred dollars (\$4,100) for tuition, fees, and books. The Commission may adjust the amount of the scholarship loan specified in this subsection to take into account increases in tuition, fees, and the cost of books, increases in the State principal assistant salary schedule, and changes in the stipend paid to participants in the program during the second year internship."

SECTION 9.16.(c) This section is effective when it becomes law and applies to recipients of scholarship loans for the 2006-2007 academic year and each subsequent academic year.

TEACHER ACADEMY TRANSFER

SECTION 9.17.(a) G.S. 116-11(12b) reads as rewritten:

"(12b) The Board of Governors of The University of North Carolina shall ~~create a Board of Directors for~~ designate the UNC programs that will comprise the UNC Center for School Leadership Development. ~~The Board of Governors shall determine the powers and duties of the Board of Directors.~~ The Board of Governors shall submit to the Governor and the General Assembly a single, unified recommended budget for the continued operation and expansion of the programs in the Center for School Leadership Development."

SECTION 9.17.(b) For fiscal year 2006-2007, all funds appropriated to The University of North Carolina for the operations of the Principal's Executive Program, the Principal Fellows Program, NC TEACH, the Model Teacher Education Consortium, and the Math Science Education Network shall be combined into a single appropriation for the Center for School Leadership Development; provided that no funds which have been designated for scholarships, scholarship loans, or stipends for teachers or school administrators may be used for an administrative purpose.

SECTION 9.17.(c) G.S. 116-30.01 is recodified as G.S. 115C-296.4 and reads as rewritten:

"§ 115C-296.4. North Carolina Teacher Academy Board of Trustees.

(a) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs. This network shall include professional development programs that focus on teaching strategies for teachers assigned to at-risk schools.

~~(b) The Board of Governors of The University of North Carolina shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of the North Carolina Teacher Academy.~~

(c) The Board of Trustees shall consist of 20 members appointed as follows:

- (1) The Superintendent of Public Instruction or the Superintendent's designee;
- (2) One member of the State Board of Education appointed by the Chair of the State Board;
- ~~(3) One member of the Board of Governors of The University of North Carolina appointed by the Chair of the Board of Governors;~~
- ~~(4) The Director of the North Carolina Center for the Advancement of Teaching;~~
- ~~(5) Two deans of Schools of One dean of a School of Education from one of the constituent institutions, appointed by the President of The University of North Carolina; Governor;~~
- (6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;
- (7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;
- ~~(8) Two Three public school teachers appointed by the Governor;~~
- (9) One superintendent of a local school administrative unit appointed by the Governor;
- (10) Two public school principals appointed by the Governor; and
- (11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.
- (12) Two at-large members appointed by the Governor.

(d) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms. The two new members under subdivision (c)(12) of this section shall serve initial terms beginning January 1,

2007, and ending June 30, 2010. The additional member appointed under subdivision (c)(8) of this section shall serve a term beginning January 1, 2007, and ending June 30, 2010. The designation of two deans serving under subdivision (c)(5) of this section shall expire December 31, 2006, and the Governor shall make a new appointment under that subdivision for a term beginning January 1, 2007, and ending June 30, 2010.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(e) The chief administrative officer of the Teacher Academy shall be a~~an~~ executive director appointed by the Board of Trustees.

~~(f) The Board of trustees shall collaborate and coordinate its programming with NCCAT [North Carolina Center for the Advancement of Teaching]."~~

SECTION 9.17.(d) The North Carolina Teacher Academy and all resources, assets, liabilities, operations, and personnel are transferred and shall be located administratively under the State Board of Education but shall exercise its powers and duties independently of the State Board of Education through its own board of trustees. This transfer shall have all of the elements of a Type II transfer, as that term is defined in G.S. 143A-6(b). Where a conflict arises regarding the transfer, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final.

SECTION 9.17.(e) G.S. 126-5 (c1) is amended by adding a new subdivision to read:

"(26) The Executive Director, associate and assistant directors, and instructional staff of the North Carolina Teacher Academy."

SECTION 9.17.(f) The North Carolina Teacher Academy shall report annually on or before October 1 to the Joint Legislative Education Oversight Committee its expenditures for the prior fiscal year. The first report shall be due no later than October 1, 2006, covering expenditures for the 2005-2006 fiscal year.

SECTION 9.17.(g) Subsections (a) and (b) of this section become effective July 1, 2006. Subsections (c) through (e) of this section become effective January 1, 2007, except that the General Assembly and the Governor may make appointments prior to that date for terms to begin January 1, 2007. The remainder of this section is effective when it becomes law.

PROGRESS BOARD FUNDS MUST BE MATCHED

SECTION 9.18. Expansion budget funds appropriated to the Board of Governors of The University of North Carolina in this act for the North Carolina Progress Board shall be matched by funds from private sources on the basis of one dollar (\$1.00) of private funds for every one dollar (\$1.00) of State funds. Unmatched expansion budget funds shall revert to the General Fund at the end of the 2006-2007 fiscal year.

PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHANGE REPORTING DATE OF AGING STUDY COMMISSION

SECTION 10.1. The third paragraph of Section 10.40A.(p) of S.L. 2005-276 reads as rewritten:

"SECTION 10.40A.(p)

...

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~~January 1, 2007.

..."

RATE SETTING FOR CHILD CARING INSTITUTIONS

SECTION 10.2.(a) Section 10.47(b) of S.L. 2005-276 is repealed.

SECTION 10.2.(b) G.S. 110-93.1 is repealed.

SECTION 10.2.(c) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

- a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);
- b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
- c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48;
- d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social ~~services;~~ and services. The Commission shall establish standardized rates for child caring institutions. In establishing standardized rates, the Commission shall consider the rate-setting recommendations provided by the Office of the State Auditor; and
- e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision."

SECTION 10.2.(d) The effective date for establishing standardized rates for child caring institutions in this State, as enacted in subsection (c) of this section, shall be July 1, 2007.

MEDICAID

SECTION 10.3.(a) Section 10.11 of S.L. 2005-276 is repealed.

SECTION 10.3.(b) Use of Funds, Allocation of Costs, Other Authorizations.

- (1) Use of Funds. – 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.
- (2) Allocation of Nonfederal Cost of Medicaid. – Except as otherwise provided in this act, 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.
- (3) Funds for Development and Acquisition of Equipment and Software. – 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.
- (4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee for Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

SECTION 10.3.(c) Policy. –

- (1) 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.
- (2) 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.
- (3) Fraud and abuse. –
 - a. 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.

- b. 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.
- (4) Medical policy. – 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 10.3.(d) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

- (1) 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:

Categorically Needy-WFFA*		Medically Needy	
Family	Standard	Families and Children	
Size	Of Need	Income	
		Level	AA,AB,AD*

1	\$4,344	\$2,172	\$2,900
2	5,664	2,832	3,900
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.

- (2) 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.
- (3) The Department of Health and Human Services shall provide Medicaid to 19 and 20-year-olds in accordance with federal rules and regulations.
- (4) Pregnant women and children. – The Department of Health and Human Services shall provide coverage to pregnant women and to children according to the following schedule:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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 subparagraphs c. and d. of this subdivision, no resources test shall be applied.

- (5) 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 eight-five percent (185%) of the federal poverty level.
- (6) 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 services, 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:

Monthly Net Wages	Monthly Incentive Allowance
\$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

- (7) Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.
- (8) 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.
- (9) 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 SSI method.

SECTION 10.3.(e) Services and Payment Bases. – Funds appropriated for Medicaid 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. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

- (1) Hospital inpatient.
- (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. – 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) Physicians, certified nurse midwife services, nurse practitioners. – Fee schedules as development by the Department of Health and Human Services.
- (5) Community Alternative Program, EPSDT Screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.
- (6) Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.
- (7) Hearing aids. – Wholesale cost plus dispensing fee to provider.
- (8) Rural health clinical services. – Provider-based, reasonable cost; non-provider-based, single-cost reimbursement rate per clinic visit.
- (9) Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g. hospitals, physicians.
- (10) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.
- (11) Ambulatory surgical centers.
- (12) Private duty nursing, clinic services, prepaid health plans.
- (13) Intermediate care facilities for the mentally retarded.
- (14) Chiropractors, podiatrists, optometrists, dentists.
- (15) Limitations on Dental Coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.
- (16) Medicare Buy-In. – Social Security Administration premium.
- (17) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.
- (18) 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.
- (19) Medicare crossover claims. – 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.
- (20) Physical therapy, occupational 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, occupational therapy, and speech therapy services are subject to prior approval and utilization review.

- (21) Personal care services.
- (22) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
- (23) Hospice.
- (24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
- (25) Health insurance premiums.
- (26) 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.
- (27) 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.
- (28) 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". In addition to the entities listed in subsection (a) of this section, the Department shall report to the Joint Legislative Commission on Governmental Operations 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.

- (29) 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, licensed clinical addictions specialists, and licensed 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, licensed clinical addiction specialists, and licensed 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.

SECTION 10.3.(f) Limitations on payments. –

- (1) 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.
- (2) 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 10.3.(g) Exceptions and limitations on services; authorization of co-payments and other services.

- (1) 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.
- (2) 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.
- (3) 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 10.3.(h) Rules, Reports, and Other Matters. –

- (1) Rules. – 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.
- (2) Changes to Medicaid program; reports. – The Department shall report 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. In addition to the entities listed in subsection (a)(4) of this section, the report shall be submitted to the Joint Legislative Health Care Oversight Committee.

INFLATIONARY INCREASES FOR MEDICAID PROVIDERS

SECTION 10.3A. Effective for the 2006-2007 fiscal year, the Secretary of the Department of Health and Human Services shall develop a plan to allocate funds available for inflationary increases among groups of Medicaid providers in accordance with the interim report from the study of Medicaid provider rates authorized in Section 10.11 of this act. Before submitting the proposed allocation plan to the Centers for Medicare/Medicaid Services ("CMS"), and not later than December 15, 2006, the Secretary shall consult with the Joint Legislative Commission on Governmental Operations ("Commission") and present the proposed allocation plan.

Based on the Secretary's allocation plan, inflationary increases shall become effective on January 1, 2007, or when State plan amendments have been approved by CMS retroactive to January 1, 2007, whichever occurs last.

PROCEDURES FOR CHANGES TO DHHS MEDICAL POLICY

SECTION 10.4. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-54.2. Procedures for changing medical policy.

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."

TRANSFER OF ASSETS REWRITE

SECTION 10.5.(a) G.S. 108A-58 is repealed.

SECTION 10.5.(b) Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"§ 108A-58.1. Ineligibility for medical assistance based on transferring assets for less than fair market value.

(a) General Rule. – Except as otherwise provided herein, an individual who is otherwise eligible to receive medical assistance under this Part is ineligible for Medicaid coverage and payment for the services specified in subsection (d) during the period specified in subsection (c) if the individual or the individual's spouse transfers an asset for less than fair market value on or after the "lookback date" specified in subsection (b).

(b) Lookback Date. –

(1) Except as otherwise provided herein, the lookback date is the date specified in 42 U.S.C. § 1396p(c)(1)(B).

(2) Notwithstanding subdivision (1), the lookback date with respect to the medical services specified in subdivision (d)(2) is the date specified in 42 U.S.C. § 1396p(c)(1)(B) or February 1, 2003, whichever is later.

(c) Penalty Period. – The penalty period for the transfer of assets for less than fair market value is the period specified in 42 U.S.C. § 1396p(c)(1)(D), (E), and (H).

(d) Medical Services. –

(1) In the case of an institutionalized individual, the transfer of assets penalty applies with respect to nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and to home- or community-based services furnished under the State's Community Alternatives Program waiver pursuant to 42 U.S.C. § 1396n(c) or (d).

(2) In the case of a noninstitutionalized individual, the transfer of assets penalty applies with respect to home health services and personal care services as defined in 42 U.S.C. § 1396d(a)(7) and (24) and, to the extent permitted by federal law, such other long-term care services specified by rules adopted by the Department of Health and Human Services pursuant to subsection (k) of this section.

(e) Assets. – Assets are the income and resources of an individual or the individual's spouse (including the individual's or spouse's home) as defined in 42 U.S.C. § 1396p(h) and 42 U.S.C. § 1396p(c)(1)(G), (I), and (J).

(f) Fair Market Value and Uncompensated Value. –

(1) The fair market value of an asset is the value (minus any valid and legally enforceable liens, mortgages, and encumbrances against the asset) that would have been received if the asset had been sold for good and valuable consideration at the prevailing market price at the time the asset was transferred. In the case of real or personal property that is taxable under Subchapter II of Chapter 105 of the General Statutes, there is a rebuttable presumption that the fair market value of the property is its most recent value as ascertained under Subchapter II

of Chapter 105 of the General Statutes (minus any valid and legally enforceable liens, mortgages, and encumbrances against the property).

- (2) The uncompensated value of an asset is its fair market value minus the amount of good and valuable consideration received in exchange for the asset's transfer.

(g) Individual. – An individual is a person who applies for or is receiving medical assistance under this Part regardless of whether the person was, at the time an asset was transferred, a Medicaid applicant or recipient. The term "individual" also includes an individual's legal representative, anyone acting at the individual's direction or request, and any person, agency, or court acting lawfully on behalf of the individual.

(h) Institutionalized and Noninstitutionalized Individuals. –

- (1) An institutionalized individual is an individual who meets the criteria set forth in 42 U.S.C. § 1396p(h)(3), regardless of whether the individual was institutionalized at the time an asset was transferred.

- (2) A noninstitutionalized individual is any individual who (i) is not an institutionalized individual, (ii) is an aged, blind, or disabled person who is categorically or medically needy pursuant to 42 C.F.R. § 120 or a qualified Medicare beneficiary as defined in 42 U.S.C. § 1396d(p)(1), and (3) is not eligible for medical assistance under this Part based on his or her eligibility for an optional State supplement pursuant to 42 C.F.R. § 435.232.

(i) Exceptions. –

- (1) This section does not apply if an individual establishes by the greater weight of the evidence that the transfer was exclusively for some purpose other than establishing or retaining eligibility for medical assistance under this Part.

- (2) This section does not apply to any transfer specified in 42 U.S.C. § 1396p(c)(2)(A), (B), (C)(i), or (C)(iii).

(j) Application to Life Estates and Income Producing Real Property. – The Department of Health and Human Services may apply federal transfer of assets policies in accordance with this section to (i) life estates purchased by or on behalf of the recipient, and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing." The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse, as defined in subsection (h) of this section. The Department shall exclude from countable resources any life estate in real property that is in the recipient's home and is measured by the recipient's life. Federal transfer of assets policies applied to income producing real property shall become effective not earlier than October 1, 2001. Federal transfer of assets policies 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 October 1, 2005.

(k) Hardship Waiver. – The Department of Health and Human Services shall waive a transfer of assets penalty that has been imposed or is impossible under this section if the Department determines that imposition of the penalty would create an undue hardship.

(l) Rules and Compliance with Federal Law. –

- (1) This section shall be interpreted and administered consistently with governing federal law, including 42 U.S.C. § 1396p(c).

- (2) The Department of Health and Human Services shall determine and publish at least annually the average monthly cost of nursing facility services for private patients that will be used in determining the length of a penalty period under this section.
- (3) The Department of Health and Human Services shall provide for a hardship waiver process in accordance with 42 U.S.C. § 1396p(c)(2)(D).
- (4) The Department of Health and Human Services may adopt administrative rules that are necessary and appropriate to implement this section or the requirements of 42 U.S.C. § 1396p(c) or other federal laws governing the transfer of assets and Medicaid eligibility."

MEDICAID DUALY ELIGIBLE TO ENROLL IN MEDICARE PARTS B AND D

SECTION 10.6. G.S. 108A-55.1 reads as rewritten:

"§ 108A-55.1. Medicare enrollment required.

The Department shall require State Medical Assistance Program recipients who qualify for Medicare to enroll in Medicare, in accordance with Title XIX of the Social Security Act, in order to pay medical expenditures that qualify for payment under Medicare ~~Part B.~~ Parts B and D, except that enrollment in Part D is not required if the recipient has creditable prescription drug coverage as defined by federal law.

Failure to enroll in Medicare shall result in nonpayment of these expenditures under the State Medical Assistance Program. A provider may seek payment for services from Medicaid enrollees who are eligible for but not enrolled in Medicare ~~Part B.~~ Parts B and D."

MEDICAID RESERVE FUND TRANSFER

SECTION 10.7.(a) 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 three million dollars (\$53,000,000) 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. The Department may use funds in the Medicaid Trust Fund and not appropriated by law for other purposes to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002.

SECTION 10.7.(b) 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 five million four thousand five hundred four dollars (\$5,004,504) for the 2006-2007 fiscal year shall be allocated as prescribed by G.S. 143-23.2(b) for the implementation of the Medicaid Management Information System (MMIS).

PILOT PROJECTS TO CONTROL COST AND IMPROVE QUALITY OF CARE FOR AGED, BLIND, AND DISABLED MEDICAID RECIPIENTS

SECTION 10.7A.(a) Section 10.17.(a) of S.L. 2005-276 reads as rewritten:

"**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. The initiatives may include one or more pilot projects to control costs and improve quality of care for the aged, blind, and disabled recipients of Medicaid."

SECTION 10.7A.(b) Section 10.14 of S.L. 2005-276 reads as rewritten:

"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 services~~, hiring additional staff, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost-containment programs.

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."

REQUIRED DATA SHARING BY PRIVATE HEALTH INSURERS

SECTION 10.8. Part 1 of Article 50 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-50-46. Insurers to provide certain information to Department of Health and Human Services.

(a) As used in this section, the terms:

- (1) 'Department' means the Department of Health and Human Services.
- (2) 'Division' means the Division of Medical Assistance of the Department of Health and Human Services.
- (3) 'Health insurer' includes self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, [29 USC Section 1167(1)]), service benefit plans, managed care organizations, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a

health care item or service as a condition of doing business in the State.

- (4) 'Medical assistance' means medical assistance benefits provided under the State Medical Assistance Plan.

(b) Health insurers, and pharmacy benefit managers regulated as third-party administrators under Article 56 of Chapter 58 of the General Statutes, shall provide, with respect to individuals who are eligible for, or are provided, medical assistance, upon request of the Division, information to determine during what period the individual or the individual's spouse or dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Division. Notwithstanding any other provision of law, every insurer issuing a health benefit plan shall provide, not more frequently than twelve times in a year and at no cost, to the Department of Health and Human Services, upon its request, information, including automated data matches conducted under the direction of the Department of Health and Human Services, Division of Medical Assistance, as necessary to (i) identify individuals covered under the insurer's health benefit plans who are also recipients of medical assistance; (ii) determine the period during which the individual or the individual's spouses or the individual's dependents may be or may have been covered by the health benefit plan; and (iii) determine the nature of the coverage. To facilitate the Division in obtaining this and other related information, every health insurer shall:

- (1) Cooperate with the Division to determine whether a named individual who is a recipient of medical assistance may be covered under the insurer's health benefit plan and eligible to receive benefits under the health benefit plan for services provided under the State Medical Assistance Plan.
- (2) Respond to the request for information within 90 working days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of medical assistance who is covered by the insurer's health benefit plan.
- (3) Accept the Division's right of recovery and the assignment to the Division of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State Medical Assistance Plan.
- (4) Respond to any inquiry by the Division regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service.
- (5) Agree not to deny a claim submitted by the Division solely on the basis of the date of submission of the claim, the type of format of the claim form, or a failure to present property documentation at the point-of-sale that is the basis of the claim, if:
 - a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and
 - b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim.

(c) An insurer that complies with this section shall not be liable on that account in any civil or criminal actions or proceedings."

TICKET TO WORK EFFECTIVE DATE CHANGE

SECTION 10.9.(a) Section 10.18(c) of S.L. 2005-276 reads as rewritten:

"**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.~~ July 1, 2007.

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."

SECTION 10.9.(b) The Department of Health and Human Services shall study and develop a plan for the implementation of the Ticket to Work Program. The Department 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 not later than March 1, 2007, on the results of its study. The report shall include what system changes need to be made to implement the Ticket to Work Program, how soon the changes can be made, and an analysis of the five-year fiscal impact of the Program.

MEDICAID/HEALTH CHOICE DENTAL ADMINISTRATIVE SERVICES STUDY

SECTION 10.9A. The Department of Health and Human Services, Division of Medical Assistance, shall study the costs and benefits of implementing a carve-out of dental administrative services provided by third-party administrators for Medicaid and NC Health Choice recipients. In conducting the study, the Division shall review the experiences of other states using carve-out for administrative services and the likelihood that a carve-out will increase the number of dentists willing to serve Medicaid and NC Health Choice recipients. The Department of Health and Human Services shall report its findings and recommendations and shall include in the report a comparison of what Medicaid and SCHIP dental programs in other states have done or are doing to increase the number of Medicaid and SCHIP recipients accessing dental care. The Department of Health and Human Services shall submit the report to the House of Representatives Appropriations Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office not later than March 1, 2007.

EXTEND EFFECTIVE DATE ON CHANGES TO LIENS ON REAL PROPERTY FOR PURPOSES OF ESTATE RECOVERY UNDER MEDICAID

SECTION 10.9B. Section 10.21C(c) of S.L. 2005-276, as amended by Section 16 of S.L. 2005-345, reads as rewritten:

"**SECTION 10.21C.(c)** This section becomes effective July 1, ~~2006,~~2007, and applies to recipients of medical assistance on or after that date."

PILOT PROGRAM TO EVALUATE USE OF TELEMONITORING EQUIPMENT IN HOME CARE SERVICES

SECTION 10.9C. The Department of Health and Human Services, Division of Medical Assistance, may implement a pilot program to evaluate the use of

telemonitoring equipment in home care services and community-based long-term care services. The pilot program may be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home care clients and community-based long-term care clients through increased monitoring and responsiveness, and resulting in increased stabilization rates. The evaluation shall include a representative number of older adults. Not later than July 1, 2007, 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, the Fiscal Research Division, and the North Carolina Study Commission on Aging on the implementation of the pilot program and its findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers.

DHHS TO STUDY STRATEGIES TO OFFSET THE COST TO PHARMACISTS OF PROVIDING SERVICES TO MEDICAID RECIPIENTS ENROLLED IN MEDICARE PART D

SECTION 10.9D. The General Assembly recognizes the critical need for pharmacy management services to Medicaid recipients enrolled in Medicare Part D. In light of the additional costs to pharmacists that provide pharmacy services to Medicaid recipients enrolled in Medicare Part D, and in light of the fact that federal law does not provide federal matching funds under the Medicaid program for these services, the Department of Health and Human Services shall study strategies for assisting pharmacists in providing these services to Medicaid recipients enrolled in Medicare Part D. In studying the strategies, the Department shall specifically address the special circumstances of pharmacists that provide pharmacy services to long-term care facilities. Among the strategies to be considered are those that address pharmacies adversely affected by the additional costs such that they may remain in business and thus continue to provide pharmacy services throughout the State. As part of this effort, the Department shall also assess the impact of the Deficit Reduction Act of 2005 on the payment for generic drugs under the Medicaid Program. The Department shall report its findings and recommended strategies 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 April 1, 2007.

ONE-TIME CAP ON MEDICAID COUNTY SHARE

SECTION 10.9E.(a) It is the intent of the General Assembly to provide sufficient funds for one-time assistance to counties with respect to the county share of the nonfederal share of Medical Assistance payments for the 2006-2007 fiscal year. To this end, the General Assembly estimates that the cost of the State maintaining the county share of the nonfederal share of Medical Assistance payments, excluding administrative costs, at the 2005-2006 level will not exceed twenty-seven million four hundred thousand dollars (\$27,400,000) for the 2006-2007 fiscal year.

SECTION 10.9E.(b) Notwithstanding any other provision of law to the contrary and subject to the limitations in subsection (d) of this section, each county's portion of the nonfederal share of Medical Assistance payments, excluding administrative costs, for the 2006-2007 fiscal year only, shall not exceed the amount paid by the county for the nonfederal share of Medical Assistance payments, excluding administrative costs, for the 2005-2006 fiscal year. In the event a county's portion of

the nonfederal share of Medical Assistance payments, excluding administrative costs, is less in fiscal year 2006-2007 than the county share paid for fiscal year 2005-2006, then the county's share for the 2006-2007 fiscal year shall be the lower amount.

SECTION 10.9E.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, a sum not to exceed twenty-seven million four hundred thousand dollars (\$27,400,000) in nonrecurring funds for the 2006-2007 fiscal year shall be used to cover the increased cost to the State resulting from the one-time assistance for the county share provided under this section.

SECTION 10.9E.(d) If fifteen percent (15%) of the nonfederal share of total Medical Assistance payments in the 2006-2007 fiscal year exceeds the amount of the nonfederal share paid by counties in fiscal year 2005-2006 plus the twenty-seven million four hundred thousand dollars (\$27,400,000) in nonrecurring funds appropriated in this act for this purpose, then the county share for 2006-2007 shall be fifteen percent (15%) of the amount by which the nonfederal share of total Medical Assistance payments exceeds the amount appropriated in this act for the one-time assistance plus the amount paid by the counties in the 2005-2006 fiscal year.

SECTION 10.9E.(e) If less than twenty-seven million four hundred thousand dollars (\$27,400,000) in nonrecurring funds for the 2006-2007 fiscal year is needed for one-time assistance for the county share, then funds remaining shall revert to the General Fund.

SECTION 10.9E.(f) The Department of Health and Human Services shall continue to track, on a monthly basis, each county's portion of the nonfederal share of Medical Assistance payments, excluding administrative costs, in fiscal year 2006-2007 as if the counties were still paying fifteen percent (15%) of all applicable nonfederal costs. The Department shall report on a monthly basis to the Fiscal Research Division each county's portion of the nonfederal share of Medical Assistance payments, excluding administrative costs, as determined by this section.

SECTION 10.9E.(g) For purposes of this section:

- (1) "Medical Assistance payments" include Medicare Part D payments.
- (2) Medical Assistance payments in fiscal year 2005-2006 represent the sum of 12 county warrants for Medicaid expenditures from June 2005, through May 2006. Medical Assistance payments in fiscal year 2006-2007 represent the sum of the 12 warrants for Medicaid expenditures from June 2006, through May 2007.

STATE/COUNTY SPECIAL ASSISTANCE

SECTION 10.9F.(a) Effective January 1, 2007, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred forty-eight dollars (\$1,148) per month per resident.

SECTION 10.9F.(b) Effective July 1, 2007, the Department of Health and Human Services shall recommend rates for State/County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend separate rates for residents of special care units. The Department shall recommend rates using appropriate cost modeling methodology and cost reports submitted by adult care homes that receive State/County Special Assistance funds and shall ensure that cost reporting is done for State/County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

SECTION 10.9F.(c) The Department of Health and Human Services shall assure coordination of the State/County Special Assistance rate and the Adult Care

Home Personal Care Services rate with the Division of Aging and Adult Services, the Division of Medical Assistance, and the Office of the Controller.

PUBLIC-PRIVATE LONG-TERM CARE PARTNERSHIP PROGRAM

SECTION 10.10. The Department of Health and Human Services shall, pursuant to authority under section 1917(b) of the Social Security Act (42 USC § 1396p(c)), as amended by Public Law 109-171 effective January 1, 2007, develop a North Carolina Long-Term Care Partnership Program. The purpose of the Program is to reduce future Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid. The Department shall structure and administer the Program in accordance with applicable federal law and guidelines for qualified State long-term care partnerships. The Program, including the treatment of assets for Medicaid eligibility and estate recovery, notwithstanding statutory provisions on treatment of assets and estate recovery to the contrary, shall offer incentives to individuals to ensure against the substantial costs of providing for their long-term care needs. The Department shall submit the proposed Program to the Senate Appropriations Committee on Health and Human Services, the House of Representative Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division prior to submitting the Program for federal approval of the necessary State Plan amendment. The Program shall not become effective until reviewed in accordance with this section.

STUDY MEDICAID PROVIDER RATE INCREASES

SECTION 10.11.(a) The Secretary of the Department of Health and Human Services shall study and develop a proposal for an equitable standard for providing inflationary increases and other cost-related increases to service providers in the Medicaid program. The Department shall seek the assistance of external consultants and other appropriate financial experts and affected parties to validate any methodologies used in the development of the standard.

SECTION 10.11.(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 thousand dollars (\$100,000) for the 2006-2007 fiscal year shall be used to support the study. Not later than March 1, 2007, the Department 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 on the findings and recommendations of the study.

SECTION 10.11.(c) The Department of Health and Human Services, Office of Internal Auditor, and Division of Medical Assistance shall study the reimbursement system for skilled nursing facilities and develop recommendations regarding rebasing the payment rates for the 2006-2007 fiscal year. The Department's shall report its recommendations to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before November 1, 2006.

INCREASE HEALTH CARE ACCESS FOR UNINSURED PERSONS

SECTION 10.12.(a) The Secretary of the Department of Health and Human Services shall develop a plan to expand health care access for uninsured North Carolinians through the use of public/private partnerships, federal flexibility and

resources, and promotion of charity care by health care providers. The goals of the plan are to:

- (1) Aid small businesses that want to provide health care coverage.
- (2) Expand health care coverage for the working uninsured persons.
- (3) Secure all available federal funds to support the program.
- (4) Promote charity care by health care providers.

SECTION 10.12.(b) In developing the plan, the Secretary shall:

- (1) Consider findings and recommendations of previous studies on increased access to health care and covering the uninsured to determine their feasibility.
- (2) Draw on the experience of other states that have successfully increased access to health care and covered the uninsured.
- (3) Determine waivers necessary to secure federal funding available through 1115 Demonstration Waivers and other federal waivers to cover the uninsured.
- (4) Explore options such as those available through the Deficit Reduction Act of 2005 (DEFRA) to adjust Medicaid eligibility and benefits to cover the uninsured.
- (5) Consider the use of existing funding that might be used to leverage additional federal matching funds including certified public expenditures (CPE), and appropriate federal Disproportionate Share Hospital Program (DSH) funds.
- (6) Pursue an agreement with the Centers for Medicare and Medicaid Services (CMS) to develop a methodology for investing Medicare savings realized from the expansion of the scope of Community Care of North Carolina Program to help fund the plan; and
- (7) Determine in conjunction with the Office of State Budget and Management the fiscal impact of the plan for a five-year period.

SECTION 10.12.(c) Of the funds appropriated in this act to the Department of Health and Human Services, Division of Medical Assistance, the sum of one hundred thousand dollars (\$100,000) for the 2006-2007 fiscal year shall be used to support the development of the plan. The proposed plan shall be submitted to the 2007 General Assembly not later than March 1, 2007.

HEALTH INFORMATION SYSTEMS (HIS) FUNDS

SECTION 10.13.(a) The sum of nine million eight hundred thirty-five thousand seven hundred ninety-five dollars (\$9,835,795) is appropriated from Budget Code 24430, Fund Code 2117, to the Department of Health and Human Services, Division of Public Health, for the 2006-2007 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. Allocation of these funds is contingent upon full compliance with the reporting requirements of Section 10.59A.(b) of S.L. 2005-276 and the identification of total estimated costs and future funding sources.

SECTION 10.13.(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, 2007.

EARLY INTERVENTION SERVICES REPORT

SECTION 10.15. The Department of Health and Human Services, Division of Public Health, shall report on Early Intervention services. The report shall include the following information for all children, ages birth to three years, entering the Early Intervention system as of July 1, 2006, through December 31, 2006:

- (1) Children served: the number of children referred and the source of referral, the number of children receiving initial evaluations, the number of children determined eligible, the number of children enrolled, and the number of IFS Plans developed.
- (2) Services provided: the number and types of evaluation services, treatment services, and other services provided and whether the service was provided by an employee of a Children's Developmental Services Agency or a private provider.
- (3) Sliding scale participation: the percentage of enrolled children whose family income falls into each of the following categories: at or below 200% of the federal poverty level, between 250% and 300% of the federal poverty level, between 350% and 400% of the federal poverty level, and over 400% of the federal poverty level. These percentages shall be reported based on gross income and net income after allowable deductions.

The Division of Public Health shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representative Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than February 1, 2007.

COMMUNITY HEALTH CENTER CHANGES

SECTION 10.16. Section 10.9(a) of S.L. 2005-276 reads as rewritten:

"SECTION 10.9.(a) Of the funds appropriated in this act for Community Health Grants, the sum of ~~two five million dollars (\$5,000,000)~~ ~~(\$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:~~ allocated to federally qualified health centers and those health centers that meet the criteria for federally qualified health centers, State-designated rural health centers, free clinics, public health departments, and other nonprofit organizations that provide primary and preventive medical services to uninsured or medically indigent patients 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.~~ In distributing funds, the Department of Health and Human Services shall consider the availability of other funds for the agency, the incidence of poverty or indigent clients served, arrangements for after-hours care, and collaboration with the applicant's community hospital and other safety net organizations."

EDUCATION ON PREVENTION OF PRETERM BIRTHS

SECTION 10.17. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, the sum of one hundred fifty thousand dollars (\$150,000) for the 2006-2007 fiscal year shall be used to provide education to women on the benefits of progesterone for those who have had preterm births and to purchase medication for eligible minority and low-income women until the medication becomes readily available through the Medicaid Program. The Division of Public Health shall evaluate the impact of the use of these funds and shall share the outcomes of the evaluation with the Division of Medical Assistance, 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.

COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE

SECTION 10.18. Of funds appropriated in this act to the Department of Health and Human Services for the 2006-2007 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) to provide grants-in-aid to local public health departments, American Indian tribes, and 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. These grants shall focus on the use of preventive measures to support health lifestyles. 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.

AUTHORIZE ONE NEW POSITION FOR HEALTHY CAROLINIANS INITIATIVE

SECTION 10.18A. The Department of Health and Human Services, Division of Public Health, may use funds appropriated to the Division of Public Health

for the Healthy Carolinians Initiative for the 2006-2007 fiscal year to support one new position for the Healthy Carolinians Initiative.

CLARIFICATION OF CERTAIN AUDIT REQUIREMENTS

SECTION 10.19. G.S. 143B-139.4.(b) reads as rewritten:

"(b) A private, nonprofit organization that receives employee assistance or other appropriate services in accordance with subsection (a) of this section, shall document all contributions received, including employee time, supplies, materials, equipment, and physical space. The documentation shall also provide an estimated value of all contributions received as well as any compensation paid to or bonuses received by State employees. This documentation shall be submitted annually to the Secretary of the Department of Health and Human Services in a format approved by the Secretary. Nonprofit organizations with less than five hundred thousand dollars (\$500,000) in annual income shall submit an affidavit or annual audit from the chief officer of the organization providing and attesting to the financial condition of the organization and the expenditure of funds or use of State employee services or other State services, within six months from the nonprofit's fiscal year end. The board of directors of each private, nonprofit organization with an annual income of five hundred thousand dollars (\$500,000) or more shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct an annual audit of the financial accounts of the organization. The board of directors shall transmit to the Secretary of the Department a copy of the annual financial audit report of the private nonprofit organization. Nothing in this subsection shall be construed to relieve the private, nonprofit organization from other applicable reporting requirements established by law."

FUNDS TO ASSIST RURAL HOSPITALS

SECTION 10.19A. Of the funds appropriated in this act to the Department of Health and Human Services, Office of Rural Health and Community Care, the sum of three million dollars (\$3,000,000) for the 2006-2007 fiscal year shall be allocated to small rural hospitals in need of assistance with the operations and infrastructure maintenance of the hospital. These funds may be used for:

- (1) Capital and operational needs of small rural hospitals. The Office of Rural Health and Community Care 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; and
- (2) Pilot demonstration programs that address issues critical to the long-term survivability of rural hospitals such as: development of regional care networks for mental health services; restructuring of emergency department and outpatient services; and disease-focused regional referral and care networks. The Office of Rural Health and Community Care shall convene an advisory group to establish criteria for the pilot demonstration projects, distribution of funds, and monitoring and evaluation of the pilot projects.

The Office of Rural Health and Community Care shall report on the allocation of funds appropriated under 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 not later than April 1, 2007.

PRIVATE WELL-WATER TESTING FEE

SECTION 10.20.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"§ 130A-5. Duties of the Secretary.

The Secretary shall have the authority:

...

- (16) To charge a fee of up to fifty-five dollars (\$55.00) for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed only for analyzing samples from newly constructed wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing, minus State appropriations that support this effort. The fee includes the charge for the private well-water panel test kit."

SECTION 10.20.(b) The Department of Health and Human Services, Division of Public Health, shall use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the Current Operations and Capital Improvements Appropriations Act of 2006. Funds realized from fees collected during the 2006-2007 fiscal year shall be used to replace available funds authorized under this subsection and allocated for positions authorized for the private well water safety program for the 2006-2007 fiscal year.

AIDS DRUG ASSISTANCE PROGRAM

SECTION 10.21. Section 10.59(a) of S.L. 2005-276 reads as rewritten:

~~"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.~~For the 2006-2007 fiscal year, the Department may adjust the financial eligibility criterion of the ADAP Program up to an amount not exceeding two hundred fifty percent (250%) of the federal poverty level in order to serve as many eligible North Carolinians living with HIV disease as possible within existing resources plus any new federal resources. If the Department raises the eligibility limit above one hundred twenty-five percent (125%) of the federal poverty level and a waiting list develops as a result, the Department shall give priority on the waiting list to those individuals at or below one hundred twenty-five percent (125%) of the federal poverty level. The Commission for Health Services shall adopt temporary rules in accordance with G.S. 150B-21.1 to implement adjustments in financial eligibility, including wait-list priorities, as soon as possible in order to access additional federal funds made available for ADAP program services."

TECHNICAL CORRECTION TO LICENSURE FEE LIMITS

SECTION 10.22. 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)~~twenty-five thousand dollars (\$25,000) for any single project:

Institutional Project	Project Fee
Hospitals	\$ 300.00 plus \$0.20/square foot of project space
Nursing Homes	\$ 250.00 plus \$0.16/square foot of project space
Ambulatory Surgical Facility	\$ 200.00 plus \$0.16/square foot of project space
Psychiatric Hospital	\$ 200.00 plus \$0.16/square foot of project space
Adult Care Home	
7 or more beds	\$ 175.00 plus \$0.10/square foot of project space
Residential Project	Project Fee
Family Care Homes	\$ 175.00 flat fee
ICF/MR Group Homes	\$ 275.00 flat fee
Group Homes: 1-3 beds	\$ 100.00 flat fee
Group Homes: 4-6 beds	\$ 175.00 flat fee
Group Homes: 7-9 beds	\$ 225.00 flat fee
Other residential:	
More than 9 beds	\$ 225.00 plus \$0.075/square foot of project space."

CLARIFICATION OF FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES

SECTION 10.23. 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
<u>Facilities (non ICF/MR):</u>	<u>0 beds</u>	<u>\$175.00</u>	<u>\$0</u>
~~Facilities (non ICF/MR):~~	~~6 or fewer~~		
	<u>1 to 6 beds</u>	\$250.00	\$0
	More than 6 beds	\$350.00	\$12.50
ICF/MR Only:	~~6 or fewer~~		
	<u>1 to 6 beds</u>	\$650.00	\$0
	More than 6 beds	\$650.00	\$12.50"

AREA AUTHORITY AND COUNTY PROGRAM CRISIS REGIONS

SECTION 10.26.(a)

Of the funds appropriated in this act to the Department of Health and Human Services, the sum of five million two hundred fifty thousand dollars (\$5,250,000) for the 2006-2007 fiscal year shall be allocated on a per capita basis and shall be used by area authorities and county programs for operational start-up, capital, or subsidies related to the development and implementation of a plan for a

continuum of regional crisis facilities and local crisis services ("crisis plan"). Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this section. As used in this section, the term "crisis" includes services for individuals with mental illnesses, developmental disabilities, and substance abuse addictions.

SECTION 10.26.(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars (\$225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more personal services contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection.

SECTION 10.26.(c) No later than August 15, 2006, the Secretary shall designate between 15 and 25 appropriate groupings of LMEs for the development of regional crisis facilities. As used in this section, the term "regional crisis facility" means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME, but that provides adequate access to a facility by all consumers in the State. The Secretary shall consult with LMEs in determining the regional groupings. The Secretary shall also take into consideration geographical factors, prior LME groupings and partnerships, and existing community facilities.

SECTION 10.26.(d) With the assistance of the consultant, the area authorities and county programs within a crisis region shall work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis stabilization units, 24-hour beds, facility-based crisis, in-patient crisis, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate to address the mental health, developmental disability, and substance abuse needs of adults, and the mental health, developmental disability, and substance abuse needs of children. Options for involuntary commitment to a secured facility must include at least one option in addition to admission to a State facility.

If all area authorities and county programs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the crisis region shall first attempt to secure those services through a community hospital or other community facility. If all the area authorities and county programs in the crisis region determine the region's crisis needs are being met, the area authorities and county programs may use the funds to meet local crisis service needs.

SECTION 10.26.(e) Each LME shall submit its crisis services plan to the Secretary for review no later than March 1, 2007. The plan shall take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated under this section. The Secretary shall review each plan to determine whether it meets

all the requirements of this section. If the Secretary approves the plan, the LME shall receive implementation funding.

The Department may allocate up to three percent (3%) of the funds appropriated under subsection (a) of this section to LMEs to assist them with the cost of developing their crisis services plans.

SECTION 10.26.(f) LMEs shall report monthly to the Department and to the consultant regarding the use of the funds, whether there has been a reduction in the use of State psychiatric hospitals for acute admissions, and any remaining gaps in local and regional crisis services. The consultant and the Department shall report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services regarding each LME's proposed and actual use of the funds appropriated under this section. The reporting requirements under this subsection shall expire July 1, 2008.

EXTEND SUNSET FOR FIRST COMMITMENT PILOT PROGRAM

SECTION 10.27. S.L. 2003-178 reads as rewritten:

"**SECTION 1.** The Secretary of Health and Human Services may, upon request of a phase-one local management entity, waive temporarily the requirements of G.S. 122C-261 through G.S. 122C-263 and G.S. 122C-281 through G.S. 122C-283 pertaining to initial (first-level) examinations by a physician or eligible psychologist of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a), as applicable, as follows:

- (1) The Secretary has received a request from a phase-one local management entity to substitute for a physician or eligible psychologist, a licensed clinical social worker, a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examinations of individuals meeting the criteria of G.S. 122C-261(a) or G.S. 122C-281(a). The waiver shall be implemented on a pilot-program basis. The request from the local management entity shall be submitted as part of the entity's local business plan and shall specifically describe:
 - a. How the purpose of the statutory requirement would be better served by waiving the requirement and substituting the proposed change under the waiver.
 - b. How the waiver will enable the local management entity to improve the delivery or management of mental health, developmental disabilities, and substance abuse services.
 - c. How the services to be provided by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist under the waiver are within each of these professional's scope of practice.
 - d. How the health, safety, and welfare of individuals will continue to be at least as well protected under the waiver as under the statutory requirement.
- (2) The Secretary shall review the request and may approve it upon finding that:
 - a. The request meets the requirements of this section.

- b. The request furthers the purposes of State policy under G.S. 122C-2 and mental health, developmental disabilities, and substance abuse services reform.
 - c. The request improves the delivery of mental health, developmental disabilities, and substance abuse services in the counties affected by the waiver and also protects the health, safety, and welfare of individuals receiving these services.
 - d. The duties and responsibilities performed by the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist are within the individual's scope of practice.
- (3) The Secretary shall evaluate the effectiveness, quality, and efficiency of mental health, developmental disabilities, and substance abuse services and protection of health, safety, and welfare under the waiver. The Secretary shall send a report on the evaluation to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substances Abuse Services on or before July 1, 2006.
 - (4) The waiver granted by the Secretary under this section shall be in effect ~~for a period not to exceed three years, or the period for which the requesting local management entity's business plan is approved, whichever is shorter, until October 1, 2007.~~
 - (5) The Secretary may grant a waiver under this section to up to five local management entities that have been designated as phase-one entities as of July 1, 2003.
 - (6) In no event shall the substitution of a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist under a waiver granted under this section be construed as authorization to expand the scope of practice of the licensed clinical social worker, the masters level psychiatric nurse, or the masters level certified clinical addictions specialist.
 - (7) The Department shall assure that staff performing the duties are trained and privileged to perform the functions identified in the waiver. The Department shall involve stakeholders including, but not limited to, the North Carolina Psychiatric Association, The North Carolina Nurses Association, National Association of Social Workers, The North Carolina Substance Abuse Professional Certification Board, North Carolina Psychological Association, The North Carolina Society for Clinical Social Work, and the North Carolina Medical Society in developing required staff competencies.
 - (8) The local management entity shall assure that a physician is available at all times to provide backup support to include telephone consultation and face-to-face evaluation, if necessary.

SECTION 2. This act becomes effective July 1, 2003, and expires ~~July 1, 2006.~~October 1, 2007."

CHANGES TO THE STATE PLAN FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

SECTION 10.28. Independent consultants hired by the Department from funds appropriated in this act for this purpose shall undertake the following tasks:

- (1) Assist DHHS with the strategic planning necessary to develop the revised State Plan as required under G.S. 122C-102. The State Plan shall be coordinated with local and regional crisis service plans by area authorities and county programs.
- (2) Study and make recommendations to increase the capacity of DHHS to implement system reform successfully and in a manner that maintains strong management functions by area authorities and county programs at the local level.
- (3) Assist the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to work with area authorities and county programs to:
 - a. Develop and implement five to ten critical performance indicators to be used to hold area authorities and county programs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than six months after the consultant's contract is awarded and in no event later than July 1, 2007.
 - b. Standardize the utilization management functions and functions related to person-centered plans.
 - c. Implement other uniform procedures for the management functions of area authorities and county programs.
- (4) Provide technical assistance and oversight to private service providers, area authorities, and county programs to ensure that best practices and new services are being delivered with fidelity to the service definition model.
- (5) Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of their administrative and management functions and the establishment and operation of community-based programs. The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.
- (6) Assist the Division with implementing standard forms, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. These processes and procedures shall include standardized denial codes and a standard policy regarding the coordination of benefits. The independent consultant shall consult with area authorities and county programs regarding the development of these forms, contracts, processes, and procedures. Any document or process developed under this subdivision shall place an obligation upon providers to transmit to area authorities and county programs timely client information and outcome data. The independent consultant shall also recommend language regarding what constitutes a clean claim for purposes of billing. When implementing this subdivision, the independent consultant shall balance the need for area authorities and county programs to exercise discretion in the discharge of their management responsibilities with the need of private service providers for a uniform

system of doing business with public entities. The independent consultant shall also (i) identify other areas of standardization that may be implemented without undermining the authority of area authorities and county programs, and (ii) identify and eliminate processes and procedures that are duplicative or result in unnecessary paperwork.

INDEPENDENT- AND SUPPORTIVE-LIVING APARTMENTS INITIATIVE

SECTION 10.30. The independent and supportive living apartments for persons with disabilities constructed from funds appropriated in this act for that purpose shall be affordable to persons with incomes at the Supplemental Security Income (SSI) level. If the North Carolina Housing Finance Agency is able to finance the apartments for less than the amount appropriated under this section, any remaining funds, as well as any interest earned on the amount appropriated, may be used to finance additional apartments, group homes, and transitional housing for individuals with disabilities.

LOCAL MANAGEMENT ENTITY ADMINISTRATIVE FUNCTIONS

SECTION 10.32.(a) The Department of Health and Human Services shall recalculate local management entity (LME) systems management allocations for fiscal year 2006-2007 to include funds for each LME to implement 24-hour, seven-days-a-week screening, triage, and referral, and to review, monitor, and comment on all person-centered plans. The Department shall allocate funds appropriated in this act for this purpose to LMEs to implement the functions described in this section.

SECTION 10.32.(b) The Secretary shall review and revise the LME systems management cost model to provide adequate funds for LMEs to fully implement the functions outlined in G.S. 122C-115.4(b) as enacted in Section 4 of this act. The Secretary shall consult with the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services prior to implementing a revised cost model.

For the 2006-2007 fiscal year and until the revised cost model is implemented, the Department shall maintain the 2005-2006 level of funding to LMEs for all LME functions except the following:

- (1) Up to thirteen million three hundred thirty-three thousand four hundred eighty-four dollars (\$13,333,481) for utilization review; and
- (2) Up to twelve million one hundred fifty-six thousand forty-two dollars (\$12,156,042) for claims processing.

Any savings of State appropriations realized from the revised cost model shall be reallocated to State-funded services for mental health, developmental disabilities, and substance abuse services.

Funds withdrawn for LME administrative functions shall be reallocated to other LMEs to be used to provide mental health, developmental disabilities, and substance abuse services. The ten percent (10%) reduction authorized under G.S. 122C-155(a1), as enacted by this section, is in addition to funding limitations of this subsection.

SECTION 10.32.(c) Effective July 1, 2007, G.S. 122C-115(a) reads as rewritten:

"§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and cities.

(a) A county shall provide mental health, developmental disabilities, and substance abuse services through an area authority or through a county program

established pursuant to G.S. 122C-115.1. The catchment area of an area authority or a county program shall contain either a minimum population of at least 200,000 or a minimum of six counties. To the extent this section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control."

SECTION 10.32.(d) Effective July 1, 2007, G.S. 122C-115 is amended by adding a new subsection to read:

"(a1) The Department of Health and Human Services shall reduce by ten percent (10%) annually the administrative funding for area authorities and county programs that do not comply with the catchment area requirements of this section."

SECTION 10.32.(e) Effective July 1, 2007, G.S. 122C-115.1(a)(3) is repealed.

DISTRIBUTION OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES FUNDS

SECTION 10.33A. Funds appropriated in this act for mental health services, substance abuse services, and crisis services shall be allocated to local management entities such that each local management entity receives a percentage of the total allocation that is equal to that local management entity's percentage of the State's total population that is below the federal poverty level.

ACCESS TO PSYCHIATRIC SERVICES

SECTION 10.33G. Funds appropriated in this act to increase access to psychiatric services for the 2006-2007 fiscal year may be used for the following purposes:

- (1) To cover non-fee-for-service billable functions that psychiatrists perform, including incentives to increase the participation of psychiatrists in new best-practice models of service such as Community Treatment Teams;
- (2) Designing graduate medical education incentives to influence the training of psychiatrists to produce more psychiatrists interested in working with public sector communities;
- (3) Designing programs for loan forgiveness and recruitment incentives for new psychiatrists serving Medicaid and other State-funded consumers.

PSYCHIATRIC HOSPITAL DEBT SERVICE; FUNDS TO SUPPORT POSITIONS IN JULIAN KEITH ADATC

SECTION 10.33H.(a) G.S. 143-15.3D(c) reads as rewritten:

"(c) Notwithstanding G.S. 143-18, any nonrecurring savings in State appropriations realized from the closure of any State psychiatric hospitals that are in excess of the cost of operating and maintaining a new State psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S. 143-18, recurring savings realized from the closure of any State psychiatric hospitals shall not revert to the General Fund but shall be ~~used for the payment of debt service on financing contract indebtedness authorized pursuant to Article 9 of Chapter 142 of the General Statutes for the construction of a new State psychiatric hospital. Any remainder not needed for this debt service shall be~~ credited to the Department of Health and Human Services to be used only for the purposes of subsections (b)(2) and (b)(3) of this section."

SECTION 10.33H.(b) The Secretary of Health and Human Services may use funds for the 2006-2007 fiscal year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to support up to 66 new positions in the Julian F. Keith Alcohol and Drug Abuse Treatment Center.

SECTION 10.33H.(c) Subsections (a) and (c) of this section become effective July 1, 2007. Debt service authorized pursuant to Article 9 of Chapter 142 of the General Statutes for the construction of a new State psychiatric hospital shall be paid with funds from the General Fund.

SUBSTANCE ABUSE SERVICES FUNDS FOR TASC

SECTION 10.33J. Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for substance abuse services, the sum of up to three hundred thousand dollars (\$300,000) shall be allocated to Treatment Accountability for Safer Communities (TASC). These funds shall be allocated to TASC before funds are allocated to local management entities for mental health services, substance abuse services, and crisis services.

CHILD CARE ALLOCATION FORMULA

SECTION 10.34.(a) Section 10.61(c) of S.L. 2005-276 reads as rewritten:

"**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 ~~year 2004-2005 and 2005-2006~~ 2006-2007 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including market rate adjustments, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section."

SECTION 10.34.(b) Not later than October 1, 2006, the Department shall implement an adjustment to child care market rates, by region, based upon the 2005 Child Care Market Rate Study. Rate adjustments shall be implemented as follows:

- (1) For three- to five-star child care center-based rates, counties in Region 1 shall receive twenty percent (20%) of the recommended rate adjustment as defined in the 2005 Child Care Market Rate Study.
- (2) For three- to five-star child care center-based rates, counties in Regions 2-5 shall receive thirty-five percent (35%) of the recommended rate adjustment as defined in the 2005 Child Care Market Rate Study.
- (3) For three- to five-star child care home-based rates, all counties shall receive twenty percent (20%) of the recommended rate adjustment as defined in the 2005 Child Care Market Rate Study.

CHILD CARE SUBSIDY RATES

SECTION 10.35. Section 10.62(e) of S.L. 2005-276 reads as rewritten:

"**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."

CHILD CARE FUNDS MATCHING REQUIREMENT

SECTION 10.36.(a) Section 10.60 of S.L. 2005-276 reads as rewritten:

"**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's initial allocation of 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. If the Department reallocates additional funds above twenty-five thousand dollars (\$25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a fifteen percent (15%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1)."

SECTION 10.36.(b) The Department of Health and Human Services shall evaluate the fifteen percent (15%) local matching requirement to determine its effect on local purchasing agencies and whether the matching requirement should be adjusted. The Department 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 no later than April 1, 2007.

REQUIRE MINIMUM OF SMART START FUNDS FOR CHILD CARE SUBSIDY

SECTION 10.37. Notwithstanding G.S. 143B-168.15(g), of the thirteen million five hundred thousand dollars (\$13,500,000) appropriated in this act to the North Carolina Partnership for Children, Inc., for the 2006-2007 fiscal year for local partnership initiatives, a minimum of thirty percent (30%) of the allocation to each local partnership shall be used for child care subsidy. This percentage shall be in addition to the direct services allocation for the 2006-2007 fiscal year.

PART X-A. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

TIMBER SALES RECEIPTS FOR CAPITAL IMPROVEMENTS

SECTION 10A.1.(a) Section 11.2 of S.L. 2005-276 reads as rewritten:

"**SECTION 11.2.** The sum of ~~one million thirty-three thousand one hundred dollars (\$1,033,100)~~ three hundred sixty-nine thousand six hundred dollars (\$369,600) 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,~~ during the 2006-2007 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."~~

SECTION 10A.1.(b) Section 11.3 of S.L. 2005-276 reads as rewritten:

"**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)~~thirty thousand dollars (\$30,000) for the 2006-2007 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be ~~used~~used, notwithstanding G.S. 146-30, 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~~studies and for the management of plant conservation program preserves owned by the Department."

SECTION 10A.1.(c) Funds 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 and shall be used by the Department for capital improvements to the grounds and facilities at the Eastern North Carolina Agricultural Center at Williamston.

SECTION 10A.1.(d) Funds transferred pursuant to this section are hereby appropriated.

PART XI. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CONSERVATION RESERVE ENHANCEMENT PROGRAM

SECTION 11.1. Funds appropriated to the Department of Environment and Natural Resources for the 2006-2007 fiscal year for the Division of Soil and Water Conservation for the Conservation Reserve Enhancement Program for acquiring conservation easements and leases or for contracts under the Program shall not revert, but shall remain available for these purposes.

GRASSROOTS SCIENCE PROGRAM

SECTION 11.3.(a) Section 12.5 of S.L. 2005-276, as amended by Section 23 of S.L. 2005-345, reads as rewritten:

"**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 and the sum of three million three hundred thirty-one thousand three hundred thirty-eight dollars (\$3,331,338) for the 2006-2007 fiscal year is allocated as grants-in-aid ~~for each fiscal year~~ as follows:

	2005-2006	<u>2006-2007</u>
Aurora Fossil Museum	\$59,057	<u>\$59,057</u>
Cape Fear Museum	\$161,007	<u>\$161,007</u>
Carolina Raptor Center	\$112,174	<u>\$112,174</u>
Catawba Science Center	\$133,429	<u>\$146,356</u>
Colburn ~~Gem and Mineral Museum, Inc.~~ <u>Earth Science Museum, Inc.</u>	\$74,545	<u>\$74,545</u>
Discovery Place	\$662,865	<u>\$662,865</u>
Eastern NC Regional Science Center	\$50,000	<u>\$50,000</u>
~~Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.~~	\$50,000	

Fascinate-U	\$80,742	<u>\$81,072</u>
Granville County Museum Commission, Inc.–Harris Gallery	\$56,422	<u>\$56,422</u>
Greensboro Children's Museum	\$135,076	<u>\$135,076</u>
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	\$134,499	<u>\$155,611</u>
Highlands Nature Center	\$79,268	<u>\$79,268</u>
Imagination Station	\$86,034	<u>\$86,034</u>
<u>The Iredell Museums, Inc.</u>		<u>\$61,306</u>
Kidsenses	\$50,000	<u>\$81,282</u>
Museum of Coastal Carolina	\$74,192	<u>\$78,020</u>
<u>The Natural Science Center of GreensboroGreensboro, Inc.</u>	\$186,354	<u>\$186,354</u>
North Carolina Museum of Life and Science	\$379,826	<u>\$379,826</u>
<u>Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.</u>	\$50,000	<u>\$50,000</u>
Rocky Mount Children's Museum	\$72,254	<u>\$72,254</u>
Schiele Museum of Natural History and Planetarium, Inc.	\$229,547	<u>\$229,547</u>
Sci Works Science Center and Environmental Park of Forsyth County	\$146,499	<u>\$146,499</u>
Western North Carolina Nature Center	\$112,879	<u>\$112,879</u>
Wilmington Children's Museum	\$71,093	<u>\$73,886</u>
Total	\$3,197,762	<u>\$3,331,338</u>

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.

SECTION 12.5.(c) No later than March 1, 2007, 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 2005-2006 fiscal year.
- (2) The operating budget for the 2006-2007 fiscal year.
- (3) The total attendance at the museum during the 2006 calendar year."

SECTION 11.3.(b) Each museum that receives funds under this section shall provide to the Department of Environment and Natural Resources and the Fiscal Research Division a copy of its annual audited financial statement within 30 days of issuance of this statement and a copy of its most recent IRS Form 990.

SECTION 11.3.(c) The Department of Environment and Natural Resources, in consultation with the Fiscal Research Division, shall study the current formula used to calculate the allocations for members of the Grassroots collaborative and shall report no later than January 15, 2007, its findings and any recommendations for revising this formula to be used for the 2007-2009 fiscal biennium to the Appropriations

Subcommittees on Natural and Economic Resources in both the Senate and the House of Representatives.

INCREASE CERTAIN PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES/IMPOSE FEES FOR REVIEW OF ENGINEERING PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OR ALTERATION OF PUBLIC WATER SYSTEMS

SECTION 11.7.(a) G.S. 130A-328 reads as rewritten:

"§ 130A-328. ~~Community~~Public water system operating permit and permit fee.

(a) No person shall operate a community or non transient non-community water system who has not been issued an operating permit by the Department. A community or non transient non-community water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community or non transient non-community water system; the fees are based on the number of persons served by the system:

<u>Number of Persons Served</u>	<u>Fee</u>
~~100 or fewer~~	~~\$150~~
~~More than 100 but no more than 500~~	~~\$175~~
~~More than 500 but no more than 3300~~	~~\$300~~
~~More than 3300 but no more than 5000~~	~~\$450~~
~~More than 5000 but no more than 10,000~~	~~\$550~~
~~More than 10,000 but no more than 50,000~~	~~\$650~~
~~More than 50,000~~	~~\$850~~
<u>Non Community Water Systems:</u>	
<u>Base Fee:</u>	
<u>Non transient non-community</u>	<u>\$150</u>
<u>Community Water Systems:</u>	
<u>Number of Persons Served</u>	
<u>50 or fewer</u>	<u>\$255</u>
<u>More than 50 but no more than 100</u>	<u>\$270</u>
<u>More than 100 but no more than 200</u>	<u>\$330</u>
<u>More than 200 but no more than 300</u>	<u>\$350</u>
<u>More than 300 but no more than 400</u>	<u>\$385</u>
<u>More than 400 but no more than 500</u>	<u>\$420</u>
<u>More than 500 but no more than 750</u>	<u>\$780</u>
<u>More than 750 but no more than 1000</u>	<u>\$810</u>
<u>More than 1000 but no more than 2000</u>	<u>\$840</u>
<u>More than 2000 but no more than 3000</u>	<u>\$870</u>
<u>More than 3000 but no more than 4000</u>	<u>\$1350</u>
<u>More than 4000 but no more than 5000</u>	<u>\$1460</u>
<u>More than 5000 but no more than 7500</u>	<u>\$1925</u>
<u>More than 7500 but no more than 10,000</u>	<u>\$2065</u>
<u>More than 10,000 but no more than 25,000</u>	<u>\$2600</u>
<u>More than 25,000 but no more than 50,000</u>	<u>\$2925</u>

<u>More than 50,000 but no more than 75,000</u>	<u>\$4250</u>
<u>More than 75,000 but no more than 100,000</u>	<u>\$4675</u>
<u>More than 100,000 but no more than 250,000</u>	<u>\$5100</u>
<u>More than 250,000 but no more than 500,000</u>	<u>\$5525</u>
<u>More than 500,000</u>	<u>\$5950</u>

(c) The following fees are imposed for the review of plans, specifications, and other information submitted to the Department for approval of construction or alteration of a public water system. The fees are based on the type of constructions or alteration proposed:

<u>Distribution system:</u>	<u>Fee</u>
<u>Construction of water lines, less than 5000 linear feet</u>	<u>\$150</u>
<u>Construction of water lines, 5000 linear feet or more</u>	<u>\$200</u>
<u>Other construction or alteration to a distribution system</u>	<u>\$75</u>

<u>Ground water system:</u>	
<u>Construction of a new ground water system or adding a new well</u>	<u>\$200</u>
<u>Alteration to an existing ground water system</u>	<u>\$100</u>

<u>Surface Water system:</u>	
<u>Construction of a new surface water treatment facility</u>	<u>\$250</u>
<u>Alteration to an existing surface water treatment facility</u>	<u>\$150</u>
<u>Water System Management Plan review</u>	<u>\$75</u>
<u>Miscellaneous changes or maintenance not covered above</u>	<u>\$50</u>

(d) The Department may charge an administrative fee of up to one hundred fifty dollars (\$150.00) for failure to pay the permit fee by January 31 of each year.

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article."

SECTION 11.7.(b) The Department of Environment and Natural Resources may create a schedule for phasing in the new fees added to G.S. 130A-328, as amended by subsection (a) of this section, over multiple operating permit cycles.

SECTION 11.7.(c) This section becomes effective January 1, 2007.

PART XII. DEPARTMENT OF COMMERCE

EMPLOYMENT SECURITY FUNDS

SECTION 12.1. Section 13.4 of S.L. 2005-276, as amended by Section 24 of S.L. 2005-345, reads as rewritten:

"**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 in the ~~2005-2006~~ 2006-2007 fiscal year shall not exceed two million dollars (\$2,000,000).

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~~ 2006-2007 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.

SECTION 13.4.(c) To the extent that federal funding for the operation and support of local Employment Security Commission offices is decreased for the 2006-2007 fiscal year, there is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina funds in a corresponding amount not to exceed one million dollars (\$1,000,000) to replace such funds."

ONE NORTH CAROLINA FUND

SECTION 12.2. Section 13.6 of S.L. 2005-276 reads as rewritten:

"**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~~2006-2007 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~~2006-2007 fiscal year to Johnson and Wales University in Charlotte for the purpose of providing financial assistance to the University."

EXTEND E-NC AUTHORITY SUNSET/E-NC AUTHORITY FUNDS AND REPORTING REQUIREMENTS

SECTION 12.3.(a) Section 4 of S.L. 2003-425 reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. The e-NC Authority created in this act is dissolved effective ~~December 31, 2006.~~ December 31, 2011. This act is repealed effective ~~December 31, 2006.~~ December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective ~~December 31, 2006.~~ December 31, 2011."

SECTION 12.3.(b) Section 13.12 of S.L. 2005-276 reads as rewritten:

"**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)~~nineteen million five hundred thousand dollars (\$19,500,000) 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.(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 12.3.(c) Of the funds appropriated in this act to the Department of Commerce, the sum of five hundred thousand dollars (\$500,000) 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 2007 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 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 September 30, 2006, and quarterly thereafter, report to the Joint Legislative Commission on Governmental Operations on program development and the evaluation of program activities.

COUNCIL OF GOVERNMENT FUNDS/ELECTRONIC TRANSFER

SECTION 12.4. Section 13.2(c) of S.L. 2005-276 reads as rewritten:

"**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~~, September 1, 2006, 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~~, January 15, 2007, as specified in subdivision (e)(2) of this section."

ADVANCED VEHICLE RESEARCH CENTER /FUNDS SHALL NOT REVERT

SECTION 12.5. Section 13.8A of S.L. 2005-276 reads as rewritten:

"**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~~, Reserve, and the funds available in the Reserve on June 30, 2006, as provided in subsections (g) and (h) of this section, the Office of State Budget and Management ~~may~~ may, subject to subsection (b1) of this section, transfer in up to four installments the sum of ~~seven million five hundred thousand dollars (\$7,500,000)~~ eleven million two hundred fifty thousand dollars (\$11,250,000) for the ~~2005-2006~~ 2006-2007 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.(b1) No funds shall be released by the Office of State Budget and Management under subsection (b) of this section until a board of directors of the Center consisting of no fewer than five members representing five different organizations is appointed and operating.

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,~~December 31, 2006, and ~~April 30, 2006,~~April 30, 2007, 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~~2006-2007 projects, objectives, and accomplishments; and (ii) fiscal year 2005-2006 itemized expenditures and fund sources. The ~~April 30, 2006,~~April 30, 2007, report shall also contain the following: (i) fiscal year ~~2006-2007~~2007-2008 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.

SECTION 13.8A.(g) Funds appropriated to the Advanced Vehicle Research Center Reserve for the 2005-2006 fiscal year for the Advanced Vehicle Research Center of North Carolina, Inc., that are unexpended and unencumbered as of June 30, 2006, shall not revert to the General Fund on June 30, 2006, but shall remain available in the Reserve.

SECTION 13.8A.(h) Subsection (g) of this section becomes effective June 30, 2006."

WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS

SECTION 12.6. Section 13.1 of S.L. 2005-276 reads as rewritten:

"SECTION 13.1.(a) Funds appropriated to the Department of Commerce for the ~~2004-2005~~2005-2006 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005,~~June 30, 2006, 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~~2005-2006 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of ~~June 30, 2005,~~June 30, 2006, shall not revert to the General Fund on ~~June 30, 2005,~~June 30, 2006.

SECTION 13.1.(c) This section becomes effective ~~June 30, 2005,~~June 30, 2006."

DEPARTMENT OF COMMERCE/REPORT ON AGRIBUSINESS FUNDS

SECTION 12.7.(a) The Department of Commerce (Department) shall report on all funds available for companies or organizations designed to promote agribusiness

in North Carolina. The report shall include the following: (i) information on all Department economic incentive funds, including Commerce State Aid funds; and (ii) information on the number of agribusinesses and organizations that applied for State funds through the Department or other organizations, including the number of requests for funds, the amount of funds requested, and whether the requests were awarded or denied.

SECTION 12.7.(b) The Department shall, in collaboration with the Department of Agriculture and Consumer Services, evaluate the use of economic incentive programs designed specifically for agribusinesses, and shall include its findings in the report. The report shall also include a plan to implement economic incentive programs designed specifically for agribusinesses and the estimated cost of the programs. In determining the estimated cost of the programs, the Department shall consider all known sources of funding, including federal, State, and grant funds.

SECTION 12.7.(c) The Department of Agriculture and Consumer Services, the Rural Economic Development Center, Inc., the University System, and all other State agencies with agribusiness programs shall compile and provide any information requested by the Department for the purpose of preparing the report.

SECTION 12.7.(d) The Department shall submit the report to the House Appropriations Committee on Environment, Health, and Natural Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than May 1, 2007.

ECONOMIC DEVELOPMENT RESERVE

SECTION 12.8.(a) There is established in the Department of Commerce a reserve to be known as the Economic Development Reserve. Funds from the Reserve shall not be expended or transferred except in accordance with the provisions of this section. Of the funds appropriated in this act to the Department of Commerce, the sum of ten million dollars (\$10,000,000) shall be allocated to the Economic Development Reserve for the purpose of awarding grants for site acquisition and economic development projects.

SECTION 12.8.(b) By May 1, 2007, the Department of Commerce shall submit a report to the Office of State Budget and Management and the Fiscal Research Division containing the following information about each economic development project that was awarded a grant: (i) the name of the grant recipient involved; (ii) a description of the project; (iii) the project location; (iv) the rationale for awarding the grant; and (v) the amount of the grant.

SECTION 12.8.(c) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(14) The Department of Commerce in developing guidelines for the North Carolina Economic Development Reserve."

PART XIII. DEPARTMENT OF LABOR

REPEAL FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 13.1. G.S. 74-24.16(d) is repealed.

PART XIV. JUDICIAL DEPARTMENT

COLLECTION OF WORTHLESS CHECK FUNDS

SECTION 14.1. Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2006, for the purchase or repair of office or information technology equipment during the 2006-2007 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.

GRANT FUNDS

SECTION 14.2. The Judicial Department may 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.

PROVIDE ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

SECTION 14.3.(a) 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~~ <u>11</u>
2	Beaufort, Hyde, Martin, Tyrrell, Washington	~~6~~ <u>7</u>
3A	Pitt	~~9~~ <u>11</u>
3B	Carteret, Craven, Pamlico	~~10~~ <u>11</u>
4	Duplin, Jones, Onslow, Sampson	~~14~~ <u>16</u>
5	New Hanover, Pender	~~14~~ <u>16</u>
6A	Halifax	~~4~~ <u>5</u>
6B	Bertie, Hertford, Northampton	~~4~~ <u>5</u>
7	Edgecombe, Nash, Wilson	~~16~~ <u>18</u>
8	Greene, Lenoir, Wayne	~~11~~ <u>13</u>
9	Franklin, Granville, Vance, Warren	~~11~~ <u>12</u>
9A	Person, Caswell	~~4~~ <u>5</u>
10	Wake	~~31~~ <u>38</u>
11	Harnett, Johnston, Lee	~~14~~ <u>16</u>

12	Cumberland	~~18~~ <u>21</u>
13	Bladen, Brunswick, Columbus	~~11~~ <u>12</u>
14	Durham	~~13~~ <u>15</u>
15A	Alamance	~~8~~ <u>10</u>
15B	Orange, Chatham	~~7~~ <u>9</u>
16A	Scotland, Hoke	~~5~~ <u>6</u>
16B	Robeson	~~10~~ <u>13</u>
17A	Rockingham	~~5~~ <u>6</u>
17B	Stokes, Surry	~~5~~ <u>7</u>
18	Guilford	~~27~~ <u>30</u>
19A	Cabarrus	~~6~~ <u>8</u>
19B	Montgomery, Moore, Randolph	~~11~~ <u>12</u>
19C	Rowan	~~5~~ <u>7</u>
20A	Anson, Richmond, Stanly	~~8~~ <u>10</u>
20B	Union	~~7~~ <u>8</u>
21	Forsyth	~~17~~ <u>20</u>
22	Alexander, Davidson, Davie, Iredell	~~16~~ <u>20</u>
23	Alleghany, Ashe, Wilkes, Yadkin	~~5~~ <u>7</u>
24	Avery, Madison, Mitchell, Watauga, Yancey	~~4~~ <u>6</u>
25	Burke, Caldwell, Catawba	~~15~~ <u>18</u>
26	Mecklenburg	~~36~~ <u>49</u>
27A	Gaston	~~12~~ <u>14</u>
27B	Cleveland, Lincoln	~~9~~ <u>10</u>
28	Buncombe	~~11~~ <u>13</u>
29A	McDowell, Rutherford	~~5~~ <u>6</u>
29B	Henderson, Polk, Transylvania	~~6~~ <u>7</u>
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	~~9~~ <u>11</u>

SECTION 14.3.(b) This section becomes effective January 1, 2007.

ADDITIONAL DISTRICT COURT JUDGESHIPS

SECTION 14.4.(a) 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~~ <u>6</u>	Craven Pamlico Carteret
4	8	Sampson Duplin Jones Onslow
5	8	New Hanover Pender
6A	~~2~~ <u>3</u>	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~~ <u>16</u>	Wake
11	~~8~~ <u>9</u>	Harnett Johnston Lee
12	9	Cumberland
13	6	Bladen Brunswick Columbus
14	~~6~~ <u>7</u>	Durham
15A	4	Alamance
15B	~~4~~ <u>5</u>	Orange Chatham
16A	3	Scotland Hoke
16B	5	Robeson

17A	~~2~~ <u>3</u>	Rockingham
17B	4	Stokes
		Surry
18	~~12~~ <u>13</u>	Guilford
19A	4	Cabarrus
19B	~~6~~ <u>7</u>	Montgomery
		Moore
		Randolph
19C	~~4~~ <u>5</u>	Rowan
20A	4	Stanly
		Anson
		Richmond
20B	~~3~~ <u>4</u>	Union
21	9	Forsyth
22	9	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	~~8~~ <u>9</u>	Burke
		Caldwell
		Catawba
26	~~17~~ <u>18</u>	Mecklenburg
27A	~~7~~ <u>8</u>	Gaston
27B	~~4~~ <u>5</u>	Cleveland
		Lincoln
28	~~7~~ <u>8</u>	Buncombe
29A	3	McDowell
		Rutherford
29B	4	Henderson
		Polk
		Transylvania
30	~~5~~ <u>6</u>	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

SECTION 14.4.(b) The Governor shall appoint the additional district court judges for Districts 3B, 6A, 10, 11, 14, 15B, 17A, 18, 19B, 19C, 20B, 25, 26, 27A, 27B,

28, and 30 authorized by this act, and those judges' successors shall be elected in the 2008 election for four-year terms commencing on January 1, 2009.

SECTION 14.4.(c) This section becomes effective January 15, 2007, as to any district court district not subject to section 5 of the Voting Rights Act of 1965. As to any district court district subject to section 5 of the Voting Rights Act of 1965, it becomes effective January 15, 2007, or the date upon which the additional judge added for that district by subsection (a) of this section is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

**PROVIDE ADDITIONAL MAGISTRATES/ELIMINATE MAXIMUM
ALLOCATION OF MAGISTRATES**

SECTION 14.5. G.S. 7A-133(c) reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates		Additional Seats of Court
	Min.	Max.	
Camden	1	3	
Chowan	2	3	
Currituck	1	4	
Dare	3	8	
Gates	2	3	
Pasquotank	3	5	
Perquimans	2	4	
Martin	4	8	
Beaufort	4	8	
Tyrrell	1	3	
Hyde	2	4	
Washington	3	4	
Pitt	10	12	Farmville Ayden Havelock
Craven	7	10	
Pamlico	2	4	
Carteret	5 <u>6</u>	8	
Sampson	6	8	
Duplin	8	11	
Jones	2	3	
Onslow	8	14	
New Hanover	6	11	
Pender	4	6	
Halifax	9	14	Roanoke Rapids, Scotland Neck
Northampton	5	7	
Bertie	4	6	
Hertford	5	7	
Nash	7	10	Rocky Mount
Edgecombe	4	7	Rocky Mount
Wilson	4	7	

Wayne	5	~~12~~	Mount Olive
Greene	~~2~~ <u>3</u>	~~4~~	
Lenoir	4	~~10~~	La Grange
Granville	3	~~7~~	
Vance	3	~~6~~	
Warren	3	~~5~~	
Franklin	3	~~7~~	
Person	3	~~4~~	
Caswell	2	~~5~~	
Wake	12	~~21~~	Apex, Wendell, Fuquay- Varina, Wake Forest
Harnett	7	~~11~~	Dunn
Johnston	10	~~12~~	Benson, Clayton, Selma
Lee	4	~~6~~	
Cumberland	10	~~19~~	
Bladen	4	~~6~~	
Brunswick	4	~~9~~	
Columbus	6	~~10~~	Tabor City
Durham	8	~~13~~	
Alamance	~~7~~ <u>8</u>	~~11~~	Burlington
Orange	4	~~11~~	Chapel Hill
Chatham	3	~~9~~	Siler City
Scotland	3	~~5~~	
Hoke	4	~~5~~	
Robeson	~~8~~ <u>9</u>	~~16~~	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	4	~~9~~	Reidsville, Eden, Madison
Stokes	2	~~5~~	
Surry	5	~~9~~	Mt. Airy
Guilford	20	~~27~~	High Point
Cabarrus	5	~~9~~	Kannapolis
Montgomery	~~2~~ <u>3</u>	~~4~~	
Randolph	5	~~10~~	Liberty
Rowan	5	~~10~~	
Stanly	5	~~6~~	
Union	4	~~7~~	
Anson	4	~~6~~	
Richmond	5	~~6~~	Hamlet

Moore	5	8	Southern Pines
Forsyth	3	~~15~~	Kernersville
Alexander	2	4	
Davidson	7	~~10~~	Thomasville
Davie	2	4	
Iredell	4	9	Mooresville
Alleghany	1	2	
Ashe	3	4	
Wilkes	4	6	
Yadkin	3	5	
Avery	3	5	
Madison	4	5	
Mitchell	3	4	
Watauga	4	6	
Yancey	2	4	
Burke	4	7	
Caldwell	4	7	
Catawba	6	~~10~~	Hickory
Mecklenburg	15	28	
Gaston	~~11~~ <u>12</u>	22	
Cleveland	5	8	
Lincoln	4	7	
Buncombe	6	~~15~~	
Henderson	4	7	
McDowell	3	6	
Polk	3	4	
Rutherford	6	8	
Transylvania	2	4	
Cherokee	3	4	
Clay	1	2	
Graham	2	3	
Haywood	5	7	Canton
Jackson	3	5	
Macon	3	5	
Swain	2	4."	

MONITORING OF COMMUNITY MEDIATION CENTERS

SECTION 14.12. G.S. 7A-38.6(a) reads as rewritten:

"(a) All community mediation centers currently receiving State funds shall report annually to the Mediation Network of North Carolina on the program's funding and activities, including:

- (1) Types of dispute settlement services provided;
- (2) Clients receiving each type of dispute settlement service;
- (3) Number and type of referrals received, cases actually mediated (identified by docket number), cases resolved in mediation, and total clients served in the cases mediated;
- (4) Total program funding and funding sources;

- (5) Itemization of the use of funds, including operating expenses and personnel;
- (6) Itemization of the use of State funds appropriated to the center;
- (7) Level of volunteer activity; and
- (8) Identification of future service demands and budget requirements.

The Mediation Network of North Carolina shall compile and summarize the information provided pursuant to this subsection and shall provide the information 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 February 1 of each year.

The Mediation Network of North Carolina shall also submit a copy of its report to the Administrative Office of the Courts. The receipt and review of this report by the Administrative Office of the Courts shall satisfy any program monitoring, evaluation, and contracting requirements imposed on the Administrative Office of the Courts by G.S. 143-6.2 and any rules adopted under that section."

INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS

SECTION 14.14. The Office of Indigent Defense Services may use a sum up to fifty thousand dollars (\$50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office 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.

OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS

SECTION 14.15. Section 14.11 of S.L. 2005-276, as amended by Section 28 of S.L. 2005-345, reads as rewritten:

"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)~~ two million one hundred eighteen thousand five hundred eighty dollars (\$2,118,580) in appropriated funds during the 2006-2007 fiscal year (i) 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 ~~40~~ 20 new attorney positions and ~~five~~ 10 new support staff positions; and (ii) to create up to two new assistant public defender positions and one new support staff position in the First Defender District and up to one new assistant public defender position in Defender District 3A, for the purpose of representing indigent persons eligible for the appointment of counsel in Superior Court District 2 and District Court District 2. 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."

REVIEW OF OFFICE OF INDIGENT DEFENSE SERVICES

SECTION 14.16. The State Auditor shall conduct an analysis of the fee payment practices of the Office of Indigent Defense Services and make

recommendations for process improvements in payment of fee applications, including recommendations regarding automation. The State Auditor shall report the results of this analysis and the recommendations resulting from it to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2007.

INCREASE THE UNIFORM FEES PAID TO JURORS

SECTION 14.17. G.S. 7A-312 reads as rewritten:

"§ 7A-312. Uniform fees for jurors; meals.

A juror in the General Court of Justice including a petit juror, or a coroner's juror, but excluding a grand juror, shall receive twelve dollars (\$12.00) ~~per day, for the first day of service and twenty dollars (\$20.00) per day afterwards,~~ per day, for the first day of service and twenty dollars (\$20.00) per day afterwards, except that if any person serves as a juror for more than five days in any 24-month period, the juror shall receive ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00) per day for each day of service in excess of five days. A grand juror shall receive ~~twelve dollars (\$12.00)~~ twenty dollars (\$20.00) per day. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees."

DIVIDE PROSECUTORIAL DISTRICT 19B INTO DISTRICTS 19B AND 19D

SECTION 14.19.(a) Effective January 15, 2007, G.S. 7A-60(a1), as amended by Section 14.3 of this act, 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	11
2	Beaufort, Hyde, Martin, Tyrrell, Washington	7
3A	Pitt	11
3B	Carteret, Craven, Pamlico	11
4	Duplin, Jones, Onslow, Sampson	16
5	New Hanover, Pender	16
6A	Halifax	5
6B	Bertie, Hertford, Northampton	5
7	Edgecombe, Nash, Wilson	18
8	Greene, Lenoir, Wayne	13
9	Franklin, Granville, Vance, Warren	12
9A	Person, Caswell	5
10	Wake	38
11	Harnett, Johnston, Lee	16

12	Cumberland	21
13	Bladen, Brunswick, Columbus	12
14	Durham	15
15A	Alamance	10
15B	Orange, Chatham	9
16A	Scotland, Hoke	6
16B	Robeson	13
17A	Rockingham	6
17B	Stokes, Surry	7
18	Guilford	30
19A	Cabarrus	8
19B	Montgomery, ~~Moore~~ , Randolph	~~12~~ 8
19C	Rowan	7
<u>19D</u>	<u>Moore</u>	<u>4</u>
20A	Anson, Richmond, Stanly	10
20B	Union	8
21	Forsyth	20
22	Alexander, Davidson, Davie, Iredell	20
23	Alleghany, Ashe, Wilkes, Yadkin	7
24	Avery, Madison, Mitchell, Watauga, Yancey	6
25	Burke, Caldwell, Catawba	18
26	Mecklenburg	49
27A	Gaston	14
27B	Cleveland, Lincoln	10
28	Buncombe	13
29A	McDowell, Rutherford	6
29B	Henderson, Polk, Transylvania	7
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	11

SECTION 14.19.(b) The district attorney position established for District 19B by subsection (a) of this section shall be filled by the district attorney currently serving District 19B who resides in Randolph County. The district attorney position established for District 19D by subsection (a) of this section shall be filled by appointment of the Governor for the remainder of the term expiring January 1, 2009. A district attorney for District 19D shall be elected in 2008 for a four-year term commencing January 1, 2009.

SECTION 14.19.(c) The eight assistant district attorney positions for District 19B under subsection (a) of this section shall be filled by eight assistant district attorneys currently serving Montgomery and Randolph Counties in District 19B. The four assistant district attorney positions for District 19D under subsection (a) of this section shall be filled by four assistant district attorneys currently serving Moore County in District 19B.

SECTION 14.19.(d) This section becomes effective January 15, 2007.

**PART XV. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY
PREVENTION**

REPORTS ON CERTAIN PROGRAMS

SECTION 15.1. Section 16.3 of S.L. 2005-276 reads as rewritten:

"**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 and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee 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 and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee 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."

STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS

SECTION 15.2. Section 16.5 of S.L. 2005-276 reads as rewritten:

"**SECTION 16.5.** Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the ~~2005-2006-2006-2007~~ 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~~ 2006-2007 fiscal year, the amount of funds anticipated for the ~~2006-2007~~ 2007-2008 fiscal year, and the allocation of funds by program and purpose."

ANNUAL EVALUATION OF COMMUNITY PROGRAMS

SECTION 15.4. Section 16.4 of S.L. 2005-276 reads as rewritten:

"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 Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees-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."

ALTERNATIVES TO JUVENILE COMMITMENT/JUVENILE CRIME PREVENTION COUNCILS

SECTION 15.5. Section 16.11 of S.L. 2005-276 is amended by adding a new subsection to read:

"SECTION 16.11.(d) The requirements of this section apply to all future allocations by the Department of Juvenile Justice and Delinquency Prevention of the funds appropriated to the Department by Section 16.11 of S.L. 2005-276 and Section 16.7 of S.L. 2004-124."

REPORTS ON YOUTH DEVELOPMENT CENTERS

SECTION 15.6.(a) Section 16.6 of S.L. 2005-276 reads as rewritten:

"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 and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee 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.

SECTION 16.6.(c) The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006, on the final recommended staffing plan for youth development centers for the 2007-2008 fiscal year. The report shall include:

- (1) The latest results of the evaluation of the pilot treatment staffing models at the Samarkand and Stonewall Jackson Youth Development Centers and the progress in implementing the model at other youth development centers.
- (2) The total recommended staffing by position classification for each youth development center. Staffing by shift shall be provided for each housing unit as well as justification for the level and type of staff on each shift.
- (3) The total cost and cost per bed for each youth development center to implement the staffing model.
- (4) The primary basis for the number of staff at each youth development center by classification.
- (5) An identification of other states that have implemented a treatment based staffing model, how the staffing patterns compare to the Department of Juvenile Justice and Delinquency Prevention proposal, and any research on the benefits and outcomes of using the treatment based approach in these states."

SECTION 15.6.(b) It is the intent of the General Assembly to consider appropriating funds for new treatment positions at youth development centers only when the report required by subsection (a) of this section is received by the Chairs of

the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

PART XVI. DEPARTMENT OF CORRECTION

INMATE COSTS/MEDICAL BUDGET FOR PRESCRIPTION DRUGS AND INMATE LAUNDRY SERVICES

SECTION 16.1. Section 17.6 of S.L. 2005-276 reads as rewritten:

"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~~ 2005-2007 biennium 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~~ 2005-2007 biennium 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 16.2. Section 17.7 of S.L. 2005-276 reads as rewritten:

"SECTION 17.7.(a) The Department of Correction may convert contract medical positions to permanent State medical positions if the Department can document in each request submitted to the Office of State Budget and Management that the total savings generated will exceed the total cost of the new ~~positions for each facility.~~ positions. ~~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,~~ April of each year 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.~~ generated."

COMPUTER/DATA PROCESSING SERVICES FUNDS

SECTION 16.3. Section 17.10. of S.L. 2005-276 reads as rewritten:

"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~~ 2005-2007 biennium 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."

REPORTS ON NONPROFIT PROGRAMS

SECTION 16.4. Section 17.22 of Session Laws 2005-276 reads as rewritten:

"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~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety 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~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety 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~~ Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety 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.

SECTION 17.22.(d) Our Children's Place shall report by February 1, 2007, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the status of the planning, design, and construction of Our Children's Place, the proposed program components and evaluation measures, and on the projected number of inmates and their children to be served. The

report shall also provide financial data, including the expenditure of State funds and all funding sources and amounts."

PAROLE ELIGIBILITY REPORT

SECTION 16.5. Section 17.28 of S.L. 2005-276 reads as rewritten:

"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 who is eligible for parole on or before July 1, 2007, 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.~~ and 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, 2007. 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 reinstate 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 ~~also report by February 1, 2006, regarding~~ on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled."

PROPOSAL FOR JOINT USE OF SWANNANOA PROPERTY/ADULT FEMALE CORRECTIONAL FACILITY AND JUVENILE YOUTH DEVELOPMENT CENTER

SECTION 16.8. The Department of Correction and the Department of Juvenile Justice and Delinquency Prevention shall prepare a joint report regarding the proposed joint use by both departments of the Swannanoa property currently used to operate the Swannanoa Valley Youth Development Center. The report shall evaluate the feasibility of using that property for both of the following: (i) to establish an adult female correctional center and (ii) to continue to operate a juvenile youth development center.

The report shall be submitted to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by November 10, 2006. The report shall include all of the following: the total costs for the project over a five-year period, including operating costs, repair and renovation costs, and the anticipated source of funding for those costs; the number and type of positions to be transferred from the Department of Juvenile Justice and Delinquency Prevention to the Department of Correction for the project; and the plan to employ existing Swannanoa Valley Youth Development Center employees by the Department of Correction. The Department of Correction shall also report on the plan for transferring employees from the Black Mountain Correctional Center to the proposed new correctional center at Swannanoa.

There shall be no transfer of any property or positions between agencies prior to consultation with the Joint Legislative Commission on Governmental Operations and the receipt of the report that is to be submitted in accordance with this section.

FEDERAL GRANT MATCHING FUNDS

SECTION 16.9. Section 17.9 of S.L. 2005-276 reads as rewritten:

"**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)~~ one million dollars (\$1,000,000) during the 2006-2007 fiscal year 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."

GANG PREVENTION INITIATIVE

SECTION 16.10. The Department of Correction shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety regarding the Security Threat Group Unit Program at Foothills Correctional Center. The report shall include information on the number of inmates in the program during fiscal years 2005-2006 and 2006-2007 compared to program capacity, describe the major program components, provide information on the measures being used to evaluate the program, and analyze program performance in relation to these measures. The Department of Correction shall submit the report as required by this section no later than March 15, 2007.

PART XVI-A. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

GRANTS TO PREVENT GANG VIOLENCE

SECTION 16A.1.(a) Of the funds appropriated in this act to the Governor's Crime Commission within the Department of Crime Control and Public Safety, the sum

of one million five hundred thousand dollars (\$1,500,000) for the 2006-2007 fiscal year shall be used to provide two-year grants for community street gang violence prevention and intervention programs. The Governor's Crime Commission shall allocate the funds using a competitive grant award process that includes a matching requirement of twenty-five percent (25%), one-half of which may be in in-kind contributions, and the presentation of a written plan for the services to be provided by the funds.

No individual grant awarded under this section may exceed one hundred thousand dollars (\$100,000).

SECTION 16A.1.(b) The Governor's Crime Commission 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 Commission shall submit its report by April 1, 2007.

PART XVII. DEPARTMENT OF ADMINISTRATION

EXAMINE FEASIBILITY OF COMBINING FUNDING SOURCES/NC COUNCIL FOR WOMEN AND DOMESTIC VIOLENCE COMMISSION

SECTION 17.1. The North Carolina Council for Women and the Domestic Violence Commission, within the Department of Administration, shall examine the feasibility of combining the funding sources to distribute domestic violence grants and sexual assault grants. The North Carolina Council for Women and the Domestic Violence Commission shall report their findings to the Chairs of the House and Senate Appropriations Subcommittees on General Government and the Joint Legislative Commission on Governmental Operations by February 1, 2007.

STATE ENERGY OFFICE NEEDS ASSESSMENT

SECTION 17.2. The State Energy Office in the Department of Administration will deplete all its funding sources on June 30, 2007. The Office has received federal funds which will no longer be available, and it has no other funding source. The State Energy Office and the Office of State Budget and Management shall jointly conduct a needs assessment to determine what functions currently being performed by the State Energy Office need to be performed in the 2007-2008 fiscal year. As part of this assessment, the mission statement of the division shall be examined to clarify what existing needs the Office should continue in the future. In conducting the needs assessment, the two agencies shall note any differences in the findings and recommendations that each may have related to the needs assessment.

The needs assessment shall be completed and presented to the Chairs of the House and Senate Appropriations Subcommittees on General Government no later than February 1, 2007.

HUB CONTRACTOR ACADEMY PROGRAM SPACE

SECTION 17.3. For the 2006-2007 fiscal year the Department of Administration shall work in conjunction with The University of North Carolina System for the continued provision of space for the HUB Contractor Academy Program to conduct training sessions. The Department of Administration shall determine whether the HUB academies should continue to hold training sessions in facilities provided by

The University of North Carolina System or seek other sites for this purpose for the 2007-2008 fiscal year and future years.

OLD REVENUE BUILDING

SECTION 17.4. The Department of Administration shall examine the feasibility of redesigning the Old Revenue Building to address security concerns and the unused and underutilized space issues identified in the Space Utilization Study, which was complete on June 5, 2006. The Department shall report its findings and recommendations to the Joint Legislative Commission on Governmental Operations by November 1, 2006.

COMMISSION ON STATE PROPERTY FUNDS

SECTION 17.5. Of the funds appropriated to the Department of Administration for the 2006-2007 fiscal year, the Director of the Budget shall transfer two hundred fifty thousand dollars (\$250,000) to the Commission on State Property established in Article 78 of Chapter 143 of the General Statutes.

PART XVII-A. DEPARTMENT OF CULTURAL RESOURCES

CULTURAL SHARING AND CARING PROGRAM

SECTION 17A.1. The Department of Cultural Resources shall report on the Cultural Sharing and Caring Program to the Joint Legislative Commission on Governmental Operations by November 1, 2006. The report shall include the following:

- (1) The plans related to offering and scheduling the program components.
- (2) A list of the program components currently available in the local school systems, including the availability and the frequency the components are offered.
- (3) The coordination required between the Department of Cultural Resources, the Department of Public Instruction, and the local school systems to provide any or all of the program components, including the anticipated level of participation in the program.
- (4) The allocation of the funding appropriated in the 2006-2007 fiscal year to support the program components.

PART XVIII. OFFICE OF ADMINISTRATIVE HEARINGS

CODIFIER'S AUTHORITY OVER THE REGISTER

SECTION 18.1. G.S. 150B-21.17 is amended by adding a new subsection to read:

"(c) The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Register."

PART XIX. DEPARTMENT OF REVENUE

REVISED MAXIMUMS FOR COLLECTION ASSISTANCE FEES

SECTION 19.2. 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)~~ one hundred fifty thousand dollars (\$150,000) a year.
- (4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax ~~debts~~ debts, not to exceed three hundred fifty-three thousand dollars (\$353,000) a year.
- (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."

CONSOLIDATE TAX PROJECTS REPORTS

SECTION 19.3.(a) G.S. 105-243.1(f) reads as rewritten:

"(f) Reports. – The report of Department activities required by G.S. 105-256 contains information on the Department's efforts to collect tax debts and its use of the proceeds of the collection assistance fee. ~~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."~~

SECTION 19.3.(b) G.S. 105-256(a) reads as rewritten:

"(a) Reports. – The Secretary shall prepare and publish the following:

...

- (6) On an annual basis, a report on the quality of services provided to ~~taxpayers, including telephone and~~ taxpayers through the Taxpayer

Assistance Call Center, walk-in assistance, and taxpayer education. The report must be submitted to the Joint Legislative Commission on Governmental Operations.

...

(8) By January 1 and July 1 of each year, a semiannual report on the Department's activities listed in this subdivision. The report must be submitted to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee.

- a. Its efforts to increase compliance with the tax laws. The report must describe the Department's existing initiatives in this area as of July 1, 2006, and must estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative. The report must describe any new initiative implemented since July 1, 2006, and estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative.
- b. Its efforts to identify and address fraud and other abuses of the voluntary tax compliance system that result in unreported and underreported tax. The report must describe the Department's long-term plan for achieving greater voluntary compliance and must summarize the steps taken since the last report and their results.
- c. Its efforts to collect tax debts. The report must include a breakdown of the amount and age of tax debts collected through warning letters and by other means, must itemize collections by type of tax, must describe the Department's long-term collection plan, and must summarize the steps taken since the last report and their results.
- d. Its use of the proceeds of the collection assistance fee imposed by G.S. 105-243.1.

SECTION 19.3.(c) The first report required under G.S. 105-256(a)(8), as enacted by this section, is due by January 1, 2007.

PAYMENT OF USUB PENALTIES TO CIVIL PENALTY AND FORFEITURE FUND

SECTION 19.4.(a) Notwithstanding G.S. 143-18, the Department of Revenue may expend up to two million four hundred thirty-four thousand two hundred seventy dollars and seventy-one cents (\$2,434,270.71) of unencumbered maintenance appropriations as of June 30, 2006, for the purpose of paying the Civil Penalty and Forfeiture Fund. The amount to be expended represents Unauthorized Substance Tax penalty collections that were paid to local law enforcement agencies for the period of July 1, 2005, through December 31, 2005. The source of the unencumbered funds shall come entirely from the Department of Revenue. If unencumbered funds are not sufficient on June 30, 2006, the Department shall use anticipated unencumbered funds as of July 1, 2006.

SECTION 19.4.(b) Through the 2008-2009 fiscal year, the Department of Revenue shall reduce succeeding distributions to a law enforcement agency under G.S. 105-113.113 to offset the amount that was improperly distributed to that agency, as described in subsection (a) of this section, and the Department shall deposit the funds collected into a reserve account which shall revert at the end of each fiscal year.

PART XX. DEPARTMENT OF THE STATE TREASURER**CONSOLIDATE PUBLIC EMPLOYEE RETIREMENT PROGRAMS IN SINGLE AGENCY**

SECTION 20.1. G.S. 143B-426.24 reads as rewritten:

"§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of ~~Administration~~State Treasurer. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for employees of the State, any county or municipality, the North Carolina Community College System, and any political subdivision of the State. Until so established, the Board heretofore established pursuant to Executive Order XII dated November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

- (1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, one of whom shall be a State employee;
- (2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
- (4) ~~The State Treasurer~~Secretary of Administration, ex officio; and
- (5) ~~The Secretary of Administration~~State Treasurer, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(h1) Notwithstanding any other law, an employee of any county or municipality, an employee of the North Carolina Community College System, or an employee of any political subdivision of the State may participate in any 457 Plan adopted by the State, with the consent of the Board and with the consent of the proper governing authority of such county, municipality, community college, or political subdivision of the State where such employee is employed.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(l) All clerical and other services and personnel required by the Board shall be supplied by the ~~Secretary of Administration~~, Department of State Treasurer, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The ~~Secretary of Administration~~ State Treasurer is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein."

PART XXI. DEPARTMENT OF TRANSPORTATION

ONLINE DEALER REGISTRATION FUNDS

SECTION 21.2.(a) Notwithstanding the provisions of Section 28.22(b) of S.L. 2005-276, for fiscal year 2006-2007, the Division of Motor Vehicles is prohibited from spending any funds appropriated to it for Online Dealer Registration enhancements.

SECTION 21.2.(b) This section becomes effective June 30, 2006.

CASH FLOW HIGHWAY FUNDS AND HIGHWAY TRUST FUND APPROPRIATIONS

SECTION 21.4.(a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2007-2008	\$1,798.0 million
For Fiscal Year 2008-2009	\$1,836.2 million
For Fiscal Year 2009-2010	\$1,859.2 million
For Fiscal Year 2010-2011	\$1,872.6 million

SECTION 21.4.(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2007-2008	\$1,128.9 million
For Fiscal Year 2008-2009	\$1,167.8 million
For Fiscal Year 2009-2010	\$1,203.0 million
For Fiscal Year 2010-2011	\$1,235.0 million

DEPARTMENT OF TRANSPORTATION TO PROVIDE REAL-TIME ACCESS TO ALL WEIGH-IN-MOTION DATA PRODUCED AND TRANSMITTED FROM WEIGH-IN-MOTION SITES THROUGHOUT THE STATE AND PROVIDE PERIODIC SUMMARIES OF DATA COLLECTED AT EXISTING DOT WEIGH-IN-MOTION SITES

SECTION 21.5.(a) Of funds appropriated to the Department of Transportation, the Department shall provide the State Highway Patrol real-time access to all real-time data collection efforts at all existing weigh-in-motion sites by October 1, 2006, to include the following:

- (1) Installing wireless access points at each site to allow the State Highway Patrol to station troopers at or near the weigh-in-motion site, capture data on a computer with software and technology capable of receiving the real-time data as it is captured by the weigh-in-motion site, and then take appropriate enforcement action.
- (2) Providing periodic summaries of collected data to assist in monitoring overweight vehicle travel volumes, habits, routes, and date and time information.
- (3) Acquiring any necessary software to allow the State Highway Patrol to interface with the existing systems at all weigh-in-motion sites throughout the State.

- (4) Providing access to any new facilities constructed on DOT rights-of-way that collect, monitor, seize, or capture any data related to violations of weight, length, or height restrictions.

SECTION 21.5.(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 October 1, 2006.

FUNDS FOR ECONOMIC DEVELOPMENT, SPOT SAFETY, AND TRANSPORTATION IMPROVEMENT PROGRAM PROJECTS

SECTION 21.6. Of the funds appropriated by this act to the Department of Transportation in fiscal year 2006-2007, 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. The Secretary of Transportation shall not prevent or delay the implementation of any projects approved by the Board of Transportation pursuant to this section.

REPEAL SUNSET OF OPEN CONTAINER LAW

SECTION 21.7. Section 21 of S.L. 2000-155, as amended by Section 1 of S.L. 2002-25, reads as rewritten:

"**SECTION 21.** Section 4 of this act is effective September 1, 2000, ~~and expires September 30, 2006.~~ 2000. Sections 19 and 20 of this act are effective when those sections become law. The remainder of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date."

MAINTENANCE OF PERMANENT WEIGH STATIONS

SECTION 21.8. G.S. 20-183.9 reads as rewritten:

"**§ 20-183.9. Establishment and maintenance of permanent weigh stations.**

The Department of Crime Control and Public Safety is hereby authorized, empowered and directed to ~~equip, operate, and maintain~~ equip and operate permanent weigh stations equipped to weigh vehicles using the streets and highways of this State to determine whether such vehicles are being operated in accordance with legislative enactments relating to weights of vehicles and their loads. The permanent weigh stations shall be established at such locations on the streets and highways in this State as will enable them to be used most advantageously in determining the weight of vehicles and their loads. The Department of Transportation shall be responsible for the maintenance and upkeep of all permanent weigh stations established pursuant to this section."

VIPER RADIO PROGRAM

SECTION 21.9. The State Highway Patrol shall issue a request for a proposal for the maintenance of the Voice Interoperability Plan for Emergency

Responders (VIPER). The bid shall be for the current system in place and shall not include installation of the system.

The Criminal Justice Information Network (CJIN) shall prepare a cost allocation plan for the continued construction and operation or the leasing of the VIPER system that shall include proposed shared costs for installation and use by all government users, including, but not limited to, the Department of Health and Human Services, the State Emergency Management Division, the Wildlife Resources Commission, the State Bureau of Investigation, the State Highway Patrol, and Alcohol Law Enforcement, and local agencies. This plan shall include the assessment of service contracts to ensure functionality and technological updates of the Viper System.

The CJIN shall report to the Legislative Transportation Oversight Committee, the Chairs of both the Appropriations Subcommittees for Transportation and Justice and Public Safety, and the Fiscal Research Division by October 1, 2006.

CONFORM SEAT BELT LAW TO FEDERAL LAW TO PREVENT A LOSS OF FEDERAL HIGHWAY FUNDS

SECTION 21.11. G.S. 20-135.2A.(c) reads as rewritten:

"(c) This section shall not apply to any of the following:

- (1) A driver or occupant of a noncommercial motor vehicle with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;
- (2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;
- (3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;
- (4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural ~~or commercial purposes;~~ purposes in intrastate commerce; or
- (5) A motor vehicle not required to be equipped with seat safety belts under federal law."

UTILIZATION OF SMALL BUSINESS ENTERPRISES IN DEPARTMENT PROJECTS OR THE USE OF FULLY OPERATED RENTAL EQUIPMENT

SECTION 21.12. From funds available to the Department of Transportation, a goal of fifty million dollars (\$50,000,000) per year is established for the utilization of small business enterprises through contracts or the use of fully operated rental equipment.

FUNDS FOR STORMWATER PROJECTS

SECTION 21.14. Of funds available to the Department of Transportation, fifteen million dollars (\$15,000,000) shall be transferred during the 2006-2007 fiscal year to the Department of Environment and Natural Resources for a stormwater pilot project to clean up State-maintained ocean outfalls and associated outlets through new and innovative technologies and filtering mechanisms.

**CONSOLIDATION OF RURAL FUNDING PROGRAMS BY THE
DEPARTMENT OF TRANSPORTATION'S PUBLIC TRANSPORTATION
DIVISION**

SECTION 21.18. The Department of Transportation, Public Transportation Division, may consolidate its rural funding programs for vehicles, technology, and facilities into one large capital program. The Division shall have the flexibility to transfer funding from the consolidated capital program to the operating programs, based on the ability to leverage additional federal funds to meet the capital needs of rural transportation systems.

PART XXII. SALARIES AND EMPLOYEE BENEFITS

GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES

SECTION 22.1.(a) Effective July 1, 2006, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred twenty-three thousand eight hundred nineteen dollars (\$123,819)~~ one hundred thirty thousand six hundred twenty-nine dollars (\$130,629) annually, payable monthly."

SECTION 22.1.(b) Section 29.1(b) of S.L. 2005-276 reads as rewritten:

"**SECTION 29.1.(b)** Effective ~~July 1, 2005,~~ July 1, 2006, the annual salaries for the members of the Council of State, payable monthly, for the ~~2005-2006 and 2006-2007~~ fiscal years-year are:

<u>Council of State</u>	<u>Annual Salary</u>
Lieutenant Governor	~~\$109,279~~ <u>115,289</u>
Attorney General	~~109,279~~ <u>115,289</u>
Secretary of State	~~109,279~~ <u>115,289</u>
State Treasurer	~~109,279~~ <u>115,289</u>
State Auditor	~~109,279~~ <u>115,289</u>
Superintendent of Public Instruction	~~109,279~~ <u>115,289</u>
Agriculture Commissioner	~~109,279~~ <u>115,289</u>
Insurance Commissioner	~~109,279~~ <u>115,289</u>
Labor Commissioner	~~109,279~~ <u>115,289</u> "

NONELECTED DEPARTMENT HEADS/SALARY INCREASES

SECTION 22.2. Section 29.2 of S.L. 2005-276 reads as rewritten:

"**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-year are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>
Secretary of Administration	~~\$106,765~~ <u>112,637</u>
Secretary of Correction	~~106,765~~ <u>112,637</u>
Secretary of Crime Control and Public Safety	~~106,765~~ <u>112,637</u>
Secretary of Cultural Resources	~~106,765~~ <u>112,637</u>
Secretary of Commerce	~~106,765~~ <u>112,637</u>
Secretary of Environment and Natural Resources	~~106,765~~ <u>112,637</u>
Secretary of Health and Human Services	~~106,765~~ <u>112,637</u>
Secretary of Juvenile Justice and Delinquency	~~106,765~~ <u>112,637</u>

Secretary of Revenue	~~106,765~~ <u>112,637</u>
Secretary of Transportation	~~106,765~~ <u>112,637</u> "

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

SECTION 22.3. Section 29.3 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.3.** The annual salaries, payable monthly, for the ~~2005-2006 and 2006-2007~~ fiscal ~~years-year~~ for the following executive branch officials are:

<u>Executive Branch Officials</u>	<u>Annual Salary</u>
Chairman, Alcoholic Beverage Control Commission	~~\$97,175~~ <u>102,520</u>
State Controller	~~135,997~~ <u>143,477</u>
Commissioner of Motor Vehicles	~~97,175~~ <u>102,520</u>
Commissioner of Banks	~~109,279~~ <u>115,289</u>
Chairman, Employment Security Commission	<u>133,161</u>
State Personnel Director	~~106,765~~ <u>112,637</u>
Chairman, Parole Commission	~~88,733~~ <u>93,613</u>
Members of the Parole Commission	~~40,960~~ <u>43,213</u>
Chairman, Utilities Commission	~~121,701~~ <u>128,395</u>
Members of the Utilities Commission	~~109,279~~ <u>115,289</u>
Executive Director, Agency for Public Telecommunications	~~81,921~~ <u>86,427</u>
Director, Museum of Art	~~99,573~~ <u>105,050</u>
Executive Director, North Carolina Agricultural Finance Authority	~~94,587~~ <u>99,789</u>
State Chief Information Officer	~~135,915~~ <u>143,390</u> "

JUDICIAL BRANCH OFFICIALS/SALARY INCREASES

SECTION 22.4. Section 29.4 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.4.(a)** The annual salaries, payable monthly, for specified Judicial Branch officials for the ~~2005-2006 and 2006-2007~~ fiscal ~~years-year~~ are:

<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
Chief Justice, Supreme Court	~~\$123,819~~ <u>130,629</u>
Associate Justice, Supreme Court	~~120,583~~ <u>127,215</u>
Chief Judge, Court of Appeals	~~117,568~~ <u>124,034</u>
Judge, Court of Appeals	~~115,559~~ <u>121,915</u>
Judge, Senior Regular Resident Superior Court	~~112,419~~ <u>118,602</u>
Judge, Superior Court	~~109,279~~ <u>115,289</u>
Chief Judge, District Court	~~99,231~~ <u>104,689</u>
Judge, District Court	~~96,091~~ <u>101,376</u>
Administrative Officer of the Courts	~~112,419~~ <u>118,602</u>
Assistant Administrative Officer of the Courts	~~102,684~~ <u>108,332</u> "

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), sixty-six thousand three hundred ninety-one dollars (\$66,391),~~ 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)~~, thirty-four thousand six hundred ninety-four dollars (\$34,694) effective ~~July 1, 2005~~. July 1, 2006.

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%). Effective July 1, 2006, the annual salaries of permanent full-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by five and one-half percent (5.5%).

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. Effective July 1, 2006, the annual salaries of permanent, part-time employees of the Judicial Department whose salaries are not itemized in this act shall be increased by five and one-half percent (5.5%)."

CLERK OF SUPERIOR COURT/SALARY INCREASES

SECTION 22.5. Effective July 1, 2006, 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	~~\$73,092~~ <u>\$77,112</u>
100,000 to 149,999	~~82,021~~ <u>86,532</u>
150,000 to 249,999	~~90,952~~ <u>95,954</u>
250,000 and above	~~99,884~~ <u>105,378</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 22.6. Effective July 1, 2006, 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	~~\$28,365~~ <u>\$29,925</u>
Maximum	~~48,579~~ <u>51,251</u>

Deputy Clerks	Annual Salary
Minimum	~~\$24,415~~ <u>\$25,758</u>
Maximum	~~37,784~~ <u>39,862.</u>

MAGISTRATES' SALARY INCREASES

SECTION 22.7.(a) Effective July 1, 2006, 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	~~\$28,739~~ <u>\$30,320</u>
Step 1	~~31,375~~ <u>33,101</u>
Step 2	~~34,243~~ <u>36,126</u>
Step 3	~~37,373~~ <u>39,429</u>
Step 4	~~40,802~~ <u>43,046</u>
Step 5	~~44,665~~ <u>47,122</u>
Step 6	~~48,997~~ <u>51,692.</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 22.7.(b) Effective July 1, 2006, 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	\$23,175\$24,450
1 or more but less than 3 years of service	24,239 25,572
3 or more but less than 5 years of service	26,380.27,831.

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 22.8. Effective July 1, 2006, 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-two thousand three hundred twenty-four dollars (\$92,324)~~ ninety-seven thousand four hundred two dollars (\$97,402) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, 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."

SERGEANTS-AT-ARMS AND READING CLERKS

SECTION 22.9. Effective July 1, 2006, 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 twenty-seven dollars (\$327.00)~~ three hundred forty-five dollars (\$345.00) 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 22.10. Effective July 1, 2006, the Legislative Services Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 2005-2006 by five and one-half percent (5.5%). Nothing in this act limits any of the provisions of G.S. 120-32.

COMMUNITY COLLEGE PERSONNEL/SALARY INCREASES

SECTION 22.11. Section 29.11 of S.L. 2005-276 reads as rewritten:

"**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. The Director of the Budget shall transfer from the Reserve for Compensation Increases, created in this act for fiscal year 2006-2007, funds to the North Carolina Community Colleges System Office necessary to provide:

- (1) An annual salary increase for faculty and professional staff of six percent (6%), plus a one-time two percent (2%) bonus, including funds for the employer's retirement and social security contributions, commencing July 1, 2006, for all community college employees supported by State funds. The one-time two percent (2%) bonus authorized by this section shall be made in accordance with rules adopted by the State Board of Community Colleges.
- (2) An annual increase of five and one-half percent (5.5%), including funds for employer's retirement and social security contributions, commencing July 1, 2006, for all other community college employees supported by State funds."

UNIVERSITY OF NORTH CAROLINA SYSTEM/EPA COMPENSATION

SECTION 22.12. Section 29.12 of S.L. 2005-276 reads as rewritten:

"**SECTION 29.12.(a)** The For the 2005-2006 fiscal year, 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(a1) For the 2006-2007 fiscal year, 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 year 2006-2007, to provide an annual salary increase of six percent (6%), including funds for the employer's retirement and social security contributions, commencing July 1, 2006, 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 percentage annual salary increase of six percent (6%), authorized by this section shall be made on an aggregated average basis, 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.

SECTION 29.12.(b1) 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 year 2006-2007, to provide an average annual salary increase of eight percent (8%), but at least an annual increase of two thousand two hundred fifty dollars (\$2,250) including funds for the employer's retirement and social security contributions, commencing July 1, 2006, 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."

UNIVERSITY FACULTY RECRUITING AND RETENTION FUND

SECTION 22.12A. Of the funds appropriated to the Reserve for Compensation Increases for the 2006-2007 fiscal year, five million dollars (\$5,000,000) shall be used to establish a Faculty Recruiting and Retention Fund under the Office of the President of The University of North Carolina. Allocations from the fund shall be made for salary increases at the discretion of the President of The University of North Carolina only for the purpose of recruiting and retaining faculty members as necessary at constituent institutions.

MOST STATE EMPLOYEES/SALARY INCREASES

SECTION 22.13. Section 29.13 of S.L. 2005-276 reads as rewritten:

"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. Effective July 1, 2006, the salaries in effect June 30, 2006, 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 Highway Funds shall be increased by five and one-half percent (5.5%).

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. Effective July 1, 2006, the compensation of 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 five and one-half percent (5.5%).

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. Effective July 1, 2006, the salaries of all permanent part-time State employees shall be increased by five and one-half percent (5.5%).

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, salary increases,~~ 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~~ For the 2005-2006 fiscal year, 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. For the 2006-2007 fiscal year, 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 the five and one-half percent (5.5%) increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 2006."

ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES

SECTION 22.14. Section 29.14 of S.L. 2005-276 reads as rewritten:

"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 fiscal year 2005-2006 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. The fiscal year 2006-2007 salary increases provided in this act are to be effective July 1, 2006, 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, 2006.

Payroll checks issued to employees ~~after July 1, 2005~~, which represent payment of services provided prior to ~~July 1, 2005~~, these increases 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 and fiscal year 2006-2007 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~~ For the 2005-2006 fiscal year, 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. For the 2006-2007 fiscal year, permanent full-time employees who work a nine-, ten-, or eleven-month work year schedule shall receive the five and one-half percent (5.5%) annual increase provided by this act."

SALARY ADJUSTMENT FUND

SECTION 22.15. Section 29.15 of S.L. 2005-276 reads as rewritten:

"SECTION 29.15.(a) Any remaining appropriations in the General Fund Reserve for Compensation Increases authorized for employee salary increases not required for that purpose may be used to supplement the General Fund Salary Adjustment Fund. Fund to support salary adjustments for positions supported by the General Fund. Any remaining appropriations in the Highway Fund Reserves and Transfers authorized for employee salary increases not required for that purpose may be used to supplement the

Highway Fund Salary Adjustment Fund to support salary adjustments for positions supported by the Highway Fund.

SECTION 29.15.(b) Funds appropriated or otherwise transferred to the General Fund Salary Adjustment Fund or to the Highway Fund 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~~—revisions, including special minimum rate adjustments, 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.

The terms 'salary range revision' and 'reallocation' as used in this section shall conform to the definitions of those terms as previously contained in the State Personnel Manual and adopted by the State Personnel Commission effective immediately prior to November 1, 2005. ~~Priority funding~~—Funding shall be given only to those salary range revisions previously approved by the State Personnel Commission and reallocations previously approved by the Office of State Personnel or ~~designee~~, designee on or before May 1, 2006, and shall not be used for other purposes including, but not limited to, in-range adjustments, career banding adjustments (whether by grade to band transfer adjustments, career progression adjustments, or other similar methods), geographic differentials, or other adjustments as these terms may be defined by State Personnel Policy.

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~~ may:

- (1) 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, not to exceed the sum of eighteen million nine hundred thousand dollars (\$18,900,000), with the oldest of the pending adjustments to be funded first.
- (2) 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."

SUSPEND CAREER BANDING INITIATIVE

SECTION 22.15A.(a) Except as provided in subsection (b) of this section and notwithstanding any other provision of law, the State Personnel Commission, the Office of State Personnel, and each State department, agency, and institution shall suspend further implementation of career banding pending subsequent action by the General Assembly after its review of the State Personnel Act, including the traditional

graded classification system and career banding. It is the intent of the 2005 General Assembly to authorize a legislative study commission to review and evaluate the compensation and other personnel policies affecting employees and employing agencies of State government.

SECTION 22.15A.(b) Career-banded classifications approved by the State Personnel Commission on or before June 15, 2006, may continue to be implemented without suspension as otherwise provided for in this section if:

- (1) It is fully and completely implemented no later than February 1, 2007; and
- (2) It is implemented entirely using technical resources provided by the Office of State Personnel and the affected agency or constituent institution.

SECTION 22.15A.(c) Career-banded classifications already approved by the State Personnel Commission on or before June 15, 2006, may be incorporated into the HR/Payroll (BEACON) program development and implementation provided that such inclusion will not delay completion and implementation of the program.

IN-RANGE ADJUSTMENTS/PURPOSE CHANGE

SECTION 22.15B. Of the funds appropriated in this act for the Department of Transportation in the amount of one million dollars (\$1,000,000) for the purpose of making in-range adjustments, no funds shall be available for expenditure for that purpose, but only for the purposes listed in Section 29.15 of S.L. 2005-276 as amended by Section 22.15 of this act.

SALARY-RELATED CONTRIBUTIONS/EMPLOYER

SECTION 22.17. Section 29.24(c) of S.L. 2005-276 reads as rewritten:

"**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%)~~ seven and fourteen hundredths percent (7.14%) – Teachers and State Employees; (ii) ~~eleven and eighty-two hundredths percent (11.82%)~~ twelve and fourteen hundredths percent (12.14%) – 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."

PROVIDE COST-OF-LIVING INCREASES FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE JUDICIAL RETIREMENT SYSTEM, AND THE LEGISLATIVE RETIREMENT SYSTEM

SECTION 22.18.(a). G.S. 135-5 is amended by adding a new subsection to read:

"(ooo) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) 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, 2005, and June 30, 2006."

SECTION 22.18.(b) G.S. 120-4.22A is amended by adding a new subsection to read:

"(u) In accordance with subsection (a) of this section, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 2006, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 2006, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) 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, 2006, and June 30, 2006."

SECTION 22.18.(c) G.S. 135-65 is amended by adding a new subsection to read:

"(aa) From and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 2005, shall be increased by three percent (3%) of the allowance payable on June 1, 2006. Furthermore, from and after July 1, 2006, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 2005, but before June 30, 2006, shall be increased by a prorated amount of three percent (3%) 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, 2005, and June 30, 2006."

INCREASE THE MONTHLY PENSION FOR MEMBERS OF THE FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND

SECTION 22.19. 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-three dollars (\$163.00)~~ one hundred sixty-five dollars (\$165.00) per month. Any retired fireman receiving a pension shall, effective ~~July 1, 2005,~~ July 1, 2006, receive a pension of ~~one hundred sixty-three dollars (\$163.00)~~ one hundred sixty-five dollars (\$165.00) 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-three dollars (\$163.00)~~ one hundred sixty-five dollars (\$165.00) 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 22.20. 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 ~~seventy-five dollars (\$75.00)~~ eighty dollars (\$80.00) per month for 20 years' creditable military service with an additional ~~seven dollars and fifty cents (\$7.50)~~ eight dollars (\$8.00) per month for each additional year of such service; provided, however, that the total pension shall not exceed ~~one hundred fifty dollars (\$150.00)~~ one hundred sixty dollars (\$160.00) 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."

EXTEND PHASED RETIREMENT PROGRAM EXEMPTION

SECTION 22.21. Section 29.28(f) of S.L. 2005-276 reads as rewritten:

"**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 earlier of June 30, 2010, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service. The remainder of this section becomes effective June 30, 2005."

PART XXIII. CAPITAL APPROPRIATIONS

CAPITAL APPROPRIATIONS/GENERAL FUND

SECTION 23.1. There is appropriated from the General Fund for the 2006-2007 fiscal year the following amounts for capital improvements:

Capital Improvements – General Fund	2006-2007
Department of Administration	
Veterans Affairs Nursing Homes	\$8,773,300
State Facilities Master Plan	1,000,000
Department of Agriculture and Consumer Services	
Rollins Laboratory – Bio Security Level 2 Lab Conversion	250,000
Oxford Complex Planning Funds	1,000,000
Department of Commerce	
NC Ports Authority Container Cranes	7,500,000
Department of Crime Control and Public Safety	
Emergency Management Operations Center	8,500,000
Marion Transportation Center Motor Fleet Lot	222,700
Department of Cultural Resources	
North Carolina History Education Center at Tryon Palace	
Historic Site and Gardens Planning Funds	1,500,000
Department of Environment and Natural Resources	
Hickory Nut Gorge Expansion	15,000,000
Water Resources Development Projects	20,000,000

NC Zoo Storage Shed	452,800
Forest Resources District 9 Headquarters	2,164,500
University of North Carolina System	
Appalachian State University College of Education	
Building Planning Funds	1,820,000
Fayetteville State University Science and Technology	
Complex Planning Funds	1,000,000
North Carolina Agricultural and Technical State	
University General Classroom Facility Planning Funds	1,000,000
North Carolina School of the Arts Library Planning Funds	1,000,000
North Carolina State University Engineering Complex III	61,000,000
University of North Carolina at Chapel Hill Genomics	
Science Building Planning and Site Development Funds	28,391,775
UNC Hospitals at Chapel Hill Master Facilities Plan	3,000,000
University of North Carolina at Greensboro Academic	
Classroom and Office Building Planning Funds	2,300,000
University of North Carolina at Pembroke Residence	
Hall Planning Funds	1,000,000
University of North Carolina at Wilmington	
School of Nursing	27,000,000
Western Carolina University School of Health and	
Gerontological Building Planning Funds	2,400,000
Winston-Salem State University Student Activities	
Center Planning Funds	768,225
Board of Governors	
Dental Schools Study and Planning Funds	7,000,000
Reserve for Capital Cost Overruns	2,300,000
TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND	\$206,343,300

WATER RESOURCES DEVELOPMENT PROJECT FUNDS

SECTION 23.2.(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:

Name of Project	2006-2007
(1) Wilmington Harbor Deepening	\$ 5,275,000

(2)	Morehead City Harbor Sand Management	1,200,000
(3)	Manteo (Shallowbag) Bay Channel Maintenance	-
(4)	Wilmington Harbor Maintenance Dredging	-
(5)	Morehead City Harbor Maintenance Dredging	0
(6)	Carolina Beach Renourishment	1,125,000
(7)	Carolina Beach Renourishment (Kure Beach)	681,000
(8)	Brunswick County Beaches Study	0
(9)	Ocean Isle Beach Renourishment (Brunswick County)	435,000
(10)	Beaufort Harbor Maintenance Dredging	300,000
(11)	B. Everett Jordan Reservoir Water Supply Storage	100,000
(12)	Aquatic Weed Control – Lake Gaston and Statewide	400,000
(13)	Waterway Connecting Pamlico Sound to Beaufort Harbor (Carteret)	400,000
(14)	John H. Kerr Reservoir Operations Evaluation	188,000
(15)	Currituck Sound Water Management Study	386,000
(16)	Surf City / North Topsail Beach Protection Study	-
(17)	West Onslow Beach (Topsail) Study (Pender County)	85,000
(18)	Hurricane Stream Restoration – Western NC (Phase II)	2,000,000
(19)	Hurricane Isabel Emergency Management Stream Cleanup (Phase III)	850,000
(20)	Bogue Banks Shore Protection Study (Carteret County)	-
(21)	Neuse River Basin Study	280,000
(22)	Beach and Inlet Management Study	500,000
(23)	Dredging Contingency Fund	2,295,000
(24)	Topsail Beach Renourishment	1,000,000
(25)	State – Local Projects	2,500,000
	TOTALS	\$ 20,000,000

SECTION 23.2.(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 2006-2007 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 2006-2007.
- (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 2007-2008 fiscal year.

SECTION 23.2.(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.

REPAIRS AND RENOVATIONS RESERVE ALLOCATION

SECTION 23.3.(a) Of the funds in the Reserve for Repairs and Renovations for the 2006-2007 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 23.3.(b) Of the funds allocated to the Office of State Budget and Management in subsection (a) of this section:

- (1) Up to eleven million eight hundred thousand dollars (\$11,800,000) for the 2006-2007 fiscal year shall be used for eligible repair and renovation projects in preparation for the construction of the Regional Medical Center and Mental Health Center in the Department of Correction.
- (2) Up to two million eight hundred thousand dollars (\$2,800,000) shall be used for repairs and renovations of facilities located on the grounds of the Palmer Memorial Institute State Historic Site.

SECTION 23.3.(c) Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, funds shall be used for projects at constituent institutions as follows:

- (1) Up to one million nine hundred thousand dollars (\$1,900,000) for the 2006-2007 fiscal year shall be used for parking and road repairs and improvements at Elizabeth City State University.
- (2) Up to six million four hundred thousand dollars (\$6,400,000) for the 2006-2007 fiscal year shall be used for replacement and repair of steam lines and steam tunnels at North Carolina Central University.
- (3) Up to four hundred sixteen thousand dollars (\$416,000) for the 2006-2007 fiscal year shall be used for planning for eligible repair and renovation projects at Rhodes Hall at the University of North Carolina at Asheville.

The amount of funding a constituent institution is allocated under this subsection shall offset the amount the constituent institution receives under subsection (a) of this section.

STATE FACILITIES MASTER PLAN

SECTION 23.10.(a) Funds are appropriated in this act to the Department of Administration to develop a new master plan for State facilities. In developing this master plan, the Department shall address the following as it relates to State operations in Wake County:

- (1) Inventory existing State real property, including land, buildings, and land allocations to State agencies.
- (2) Inventory lease space occupied by State agencies.
- (3) Survey State agencies' capital improvement needs, including the State's Six-Year Capital Improvement Plan.
- (4) Project the growth in personnel needed to support State operations.
- (5) Analyze State agencies' existing facilities and requested capital improvements against program missions, goals, and operations.
- (6) Recommend a facilities master plan for State operations that meets the facilities needs of State agencies and makes efficient use of State land and buildings.
- (7) Recommend State agency operations that should be relocated from the City of Raleigh to achieve subdivision (6) of this subsection.
- (8) Recommend a transit plan for State operations that may include the use of parking structures, public transit, and park and ride facilities.
- (9) Recommend an implementation plan for the facilities master plan. The implementation plan shall include the sequencing of proposed capital improvement projects and a proposal for financing the facilities master plan. The implementation plan shall be consistent with capital planning efforts in the Office of State Budget and Management.

SECTION 23.10.(b) To the extent that funds are available to do so, the Department of Administration shall expand the scope of the facilities master plan to include State operations outside of Wake County.

SECTION 23.10.(c) The Department of Administration shall deliver the facilities master plan to the Joint Legislative Oversight Committee on Capital Improvements by October 1, 2007.

SECTION 23.10.(d) Of the funds appropriated in this act to the General Assembly, Legislative Services Commission, the sum of sixty thousand dollars (\$60,000) shall be allocated to the Dorothea Dix Hospital Property Study Commission to be used to contract for land use consultant services to review, analyze, and make recommendations regarding the following in relation to the Dorothea Dix Hospital Property:

- (1) Funding options for compatible uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services;
- (2) The financial feasibility of the uses under subdivision (1) of this subsection;
- (3) An assessment of financial mechanisms for the implementation and maintenance of the uses under subdivision (1) of this subsection; and
- (4) Administrative or governance structures to implement the uses under subdivision (1) of this subsection.

The consultant shall submit its work product to the Dorothea Dix Hospital Property Study Commission no later than November 1, 2006. The Commission shall review the plan and make recommendations upon the convening of the 2007 Regular Session of the 2007 General Assembly.

UNC-CH/ECU DENTAL SCHOOLS

SECTION 23.11.(a) Of the funds appropriated by this act to the Board of Governors of The University of North Carolina for the 2006-2007 fiscal year the sum of seven million dollars (\$7,000,000) shall be used as follows: (i) to complete the plan and design for expanding the School of Dentistry at the University of North Carolina at Chapel Hill, (ii) to conduct a study regarding the feasibility of establishing a School of Dentistry at East Carolina University and the impact that the School would have on the other dental programs provided by The University of North Carolina, and (iii) if the Board of Governors determines that it is appropriate to establish a School of Dentistry at East Carolina University based on the findings and recommendations of the feasibility study, to provide advance planning funds to East Carolina University for the capital improvements needed to establish a new dental school. The funds allocated by this section to East Carolina University shall be held in reserve by the Board of Governors and shall be allocated to East Carolina University only if the Board of Governors decides that it is appropriate to establish a School of Dentistry at that University.

SECTION 23.11.(b) The Board of Governors may contract with a private consultant to conduct the feasibility study required by subsection (a) of this section.

SPECIAL INDEBTEDNESS PROJECTS

SECTION 23.12.(a) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty million dollars (\$40,000,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. 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 costs of constructing and renovating the project described in this subsection.

SECTION 23.12.(b) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars (\$20,000,000) to finance the capital facility costs of completing the Central Regional Psychiatric Hospital for the Department of Health and Human Services. 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 capital facility costs of the project described in this subsection.

SECTION 23.12.(c) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty-four million eight hundred forty-one thousand three hundred dollars (\$24,841,300) to finance the capital facility costs of a new Secondary State Data Center. 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 capital facility costs of the project described in this subsection.

SECTION 23.12.(d) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty-five million eight hundred twenty-seven thousand four

hundred dollars (\$45,827,400) to finance the capital facility costs of a new Center City Classroom Building at the University of North Carolina – Charlotte. 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 capital facility costs of the project described in this subsection.

SECTION 23.12.(e) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred one million dollars (\$101,000,000) to finance the capital facility costs of the Department of Health and Human Services Public Health Laboratory and Office of Chief Medical Examiner. 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 capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007.

SECTION 23.12.(f) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred forty-five million five hundred thousand dollars (\$145,500,000) to finance the capital facility costs of the Eastern Regional Psychiatric Hospital for the Department of Health and Human Services. 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 capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of one hundred million dollars (\$100,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008.

SECTION 23.12.(g) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred thirty-two million two hundred thousand dollars (\$132,200,000) to finance the capital facility costs of the Regional Medical Center and Mental Health Center of the Department of Correction. 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 capital facility costs of the project described in this subsection. No more than a maximum aggregate principal amount of eight million two hundred thousand dollars (\$8,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2007. No more than a maximum aggregate principal amount of fifty-eight million two hundred thousand dollars (\$58,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of ninety-eight million two hundred thousand dollars (\$98,200,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(h) In accordance with G.S. 142-83, this subsection authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred sixty-two million eight hundred thousand dollars (\$162,800,000) to finance the capital facility costs of the Western Regional Psychiatric Hospital for the Department of Health and Human Services. 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 capital facility costs of the project described in this subsection. No special indebtedness may be issued or incurred under this subsection prior to July 1, 2008. No more than a maximum aggregate principal amount of twenty million dollars (\$20,000,000) of special indebtedness may be issued or incurred under this subsection prior to July 1, 2009.

SECTION 23.12.(i) This section is effective when it becomes law.

PART XXIV. TAX REDUCTIONS

REDUCE SALES TAX RATE EARLY

SECTION 24.1.(a) Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, Section 9.1 of S.L. 2005-144, and Section 33.1 of S.L. 2005-276, 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 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 24.1.(b) G.S. 105-164.4(a), as amended by 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 1/2%)~~ one-quarter percent (4.25%).

..."

SECTION 24.1.(c) G.S. 105-164.4(a), as amended by subsections (a) and (b) 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-quarter percent (4.25%)~~ percent (4%).

..."

SECTION 24.1.(d) If House Bill 2047, 2005 General Assembly, does not become law, then 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 three one-hundredths percent (18.03%)~~ eighteen and seventy one-hundredths percent (18.70%) 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 24.1.(e) If House Bill 2047, 2005 General Assembly, does not become law, then G.S. 105-164.44F(a), as amended by subsection (d) of this section, 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 seventy one hundredths percent (18.70%)~~nineteen and forty-two one-hundredths percent (19.42%) 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 24.1.(f) If House Bill 2047, 2005 General Assembly, becomes law, then G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute 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 the following percentages of the net proceeds of the taxes collected during the quarter:

- (1) ~~Eighteen and three one hundredths percent (18.03%)~~seventy one-hundredths percent (18.70%) minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948), must be distributed to cities in accordance with this section. The 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. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."
- (2) ~~Seven and twenty three one hundredths percent (7.23%)~~(7.7%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 24.1.(g) If House Bill 2047, 2005 General Assembly, becomes law, then G.S. 105-164.44F(a), as amended by subsection (f) of this section, reads as rewritten:

"(a) Amount. – The Secretary must distribute 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 the following percentages of the net proceeds of the taxes collected during the quarter:

- (1) ~~Eighteen and seventy one hundredths percent (18.70%)~~Nineteen and forty-two one-hundredths percent (19.42%) minus two million six hundred twenty thousand nine hundred forty-eight dollars

(\$2,620,948), must be distributed to cities in accordance with this section. The 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. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."

- (2) ~~Seven and seven tenths percent (7.7%)~~ Eight percent (8%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 24.1.(h) If House Bill 2047, 2005 General Assembly, becomes law, then G.S. 105-164.44I(a) reads as rewritten:

"(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) ~~Twenty two and sixty one one hundredths percent (22.61%)~~ Twenty-three and six tenths percent (23.6%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) ~~Thirty-seven and one tenths percent (37%)~~ (37.1%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service."

SECTION 24.1.(i) If House Bill 2047, 2005 General Assembly, becomes law, then G.S. 105-164.44I(a), as amended by subsection (h) of this section, reads as rewritten:

"(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) ~~Twenty-three and six tenths percent (23.6%)~~ Twenty-five percent (25%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) ~~Thirty-seven and one tenths five tenths percent (37.1%)~~ (37.5%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service."

SECTION 24.1.(j) Subsection (b) of this section becomes effective December 1, 2006, and applies to sales made on or after that date. Subsections (d), (f), and (h) of this section become effective January 1, 2007, and apply to taxes collected on

or after that date. Subsection (c) of this section becomes effective July 1, 2007, and applies to sales made on or after that date. Subsections (e), (g), and (i) of this section become effective July 1, 2007, and apply to taxes collected on or after that date. The remainder of this section is effective when it becomes law.

REDUCE INCOME TAX RATE APPLICABLE TO MOST SMALL BUSINESSES EARLY

SECTION 24.2.(a) Section 39.1 of S.L. 2003-284, as amended by Section 36.1(a) of S.L. 2005-276, is repealed.

SECTION 24.2.(b) G.S. 105-134.2(a), as amended by subsection (a) of this section, reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

- (1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	\$21,250	6%
\$21,250	\$100,000	7%
\$100,000	\$200,000	7.75%
\$200,000	NA	~~8.25%~~ <u>8%</u>

- (2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	\$17,000	6%
\$17,000	\$80,000	7%
\$80,000	\$160,000	7.75%
\$160,000	NA	~~8.25%~~ <u>8%</u>

- (3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	\$12,750	6%
\$12,750	\$60,000	7%
\$60,000	\$120,000	7.75%
\$120,000	NA	~~8.25%~~ <u>8%</u>

- (4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	\$10,625	6%
\$10,625	\$50,000	7%
\$50,000	\$100,000	7.75%
\$100,000	NA	~~8.25%~~ <u>8%</u> " .

SECTION 24.2.(c) G.S. 105-134.2(a), as amended by subsections (a) and (b) of this section, reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

- (1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	\$21,250	6%
\$21,250	\$100,000	7%
\$100,000	~~\$200,000~~ NA	7.75%
~~\$200,000~~	NA	8%

- (2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	\$17,000	6%
\$17,000	\$80,000	7%
\$80,000	~~\$160,000~~ NA	7.75%
~~\$160,000~~	NA	8%

- (3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	\$12,750	6%
\$12,750	\$60,000	7%
\$60,000	~~\$120,000~~ NA	7.75%
~~\$120,000~~	NA	8%

- (4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	\$10,625	6%
\$10,625	\$50,000	7%
\$50,000	~~\$100,000~~ NA	7.75%
~~\$100,000~~	NA	8%".

SECTION 24.2.(d) Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2007. Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2008. The remainder of this section is effective when it becomes law.

CAP THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUELS TAX RATE FOR ONE YEAR AND HOLD HIGHWAY FUNDS HARMLESS

SECTION 24.3.(a) Notwithstanding G.S. 105-449.80(a), for the period July 1, 2006, through June 30, 2007, the variable wholesale component of the motor fuel excise tax rate may not exceed twelve and four-tenths cents (12.4¢) a gallon.

SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 24.4.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.16E. Credit for small business employee health benefits.

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125 or if its employees have qualifying existing coverage.

The credit is equal to a dollar amount per eligible employee whose total wages or salary received from the business does not exceed forty thousand dollars (\$40,000) on an annual basis. The dollar amount is two hundred fifty dollars (\$250.00), not to exceed the taxpayer's costs of providing health benefits for the employee during the taxable year.

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Qualifying existing coverage. – Defined in G.S. 58-50-130(a)(4a).

(3) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) Sunset. – This section expires for taxable years beginning on or after January 1, 2009."

SECTION 24.4.(b) This section is effective for taxable years beginning on or after January 1, 2007.

EXPAND DEFINITION OF DEVELOPMENT ZONE

SECTION 24.5.(a) G.S. 105-129.3A(a) reads as rewritten:

"(a) Development Zone Defined. – A development zone is an area comprised of either an economic development and training district as defined by G.S. 153A-317.12 or one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

- (1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Budget Officer.
- (2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Budget Officer.
- (3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.
- (4) Every census tract and census block group in the zone meets at least one of the following conditions:

- a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.
 - b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
- (5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce."

SECTION 24.5.(b) This section is effective for taxable years beginning on or after January 1, 2004.

EXTEND SUNSETS ON SALES AND USE TAX REFUNDS FOR AVIATION FUEL

SECTION 24.6.(a) G.S. 105-164.14(l) reads as rewritten:

"(l) Aviation Fuel for Motorsports Events. – A professional motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed for purchases made on or after January 1, 2009."

SECTION 24.6.(b) G.S. 105-164.14(a1) reads as rewritten:

"(a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in excess of two million five hundred thousand dollars (\$2,500,000). The "net amount of sales and use tax paid" is the amount paid less the refund allowed under subsection (a) of this section. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the calendar year for which the refund is claimed. The refund allowed by this subsection is in addition to the refund allowed in subsection (a) of this section. This subsection is repealed for purchases made on or after January 1, 2009."

SECTION 24.6.(c) Section 62 of S.L. 2005-435 reads as rewritten:

"**SECTION 62.** This part becomes effective January 1, 2005, and applies to purchases made on or after that date. ~~This part is repealed effective for purchases made on or after January 1, 2007.~~ This part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this part 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 24.6.(d) This section is effective when it becomes law.

ETHYL ALCOHOL TAX CREDIT

SECTION 24.7.(a) G.S. 105-129.16D reads as rewritten:

"§ 105-129.16D. Credit for constructing renewable fuel facilities.

(a) Dispensing Credit. – A taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel is allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(b) Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars (\$400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars (\$400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. If a credit allowed under this subsection expires, a taxpayer is not eligible for a credit under subsection (b) of this section with respect to the same property. Notwithstanding the provisions of

G.S. 105-129.17(a), a taxpayer may claim the credit allowed under this subsection against the income tax imposed under Article 4 of this Chapter only.

(c) No Double Credit. – A taxpayer may not claim the credits allowed under subsections (b) and (b1) of this section with respect to the same facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, 2008.2011."

SECTION 24.7.(b) This section is effective for taxable years beginning on or after January 1, 2006.

TAX CREDIT FOR BIODIESEL PRODUCER

SECTION 24.8.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.16F. Credit for biodiesel producers.

(a) Credit. – A biodiesel provider that produces at least 100,000 gallons of biodiesel during the taxable year is allowed a credit equal to the per gallon excise tax the producer paid under Article 36C of this Chapter on the biodiesel. For the purposes of this section, 'biodiesel' is liquid fuel derived in whole from agricultural products, animal fats, or wastes from agricultural products or animal fats. The credit does not apply to tax paid on diesel fuel included in a biodiesel blend. The credit may not exceed five hundred thousand dollars (\$500,000) and is subject to the limitations of G.S. 105-129.17.

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2010."

SECTION 24.8.(b) This section is effective for taxable years beginning on or after January 1, 2008.

R&D SALES TAX CHANGES

SECTION 24.9.(a) G.S. 105-187.51B reads as rewritten:

"§ 105-187.51B. Tax imposed on ~~recycling equipment.~~ certain recyclers and research and development companies.

(a) Tax. – A privilege tax is imposed on a~~the following:~~

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

~~(1)a.~~ (1)a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

~~(2)b.~~ (2)b. Port and dock facilities.

~~(3)c.~~ (3)c. Rail equipment.

~~(4)d.~~ (4)d. Material handling equipment.

(2) A research and development company in the physical, engineering, and life sciences that is included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:

a. Is capitalized by the company for tax purposes under the Code.

b. Is used by the company in the research and development of tangible personal property.

- c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other tangible personal property. The maximum tax is eighty dollars (\$80.00) per article."

SECTION 24.9.(b) This section becomes effective January 1, 2007.

SALES AND USE TAX REFUND FOR MOTORSPORTS RACING TEAMS

SECTION 24.10.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:

- a. The team is operated for profit.
- b. A majority of the revenues of the team is derived from sponsorship of the racing team and prize money.
- c. The team competes in at least sixty-six percent (66%) of the races sponsored in a single season by a motorsports sanctioning body.

(30b) Prosthetic device. – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device.

- a. Artificially replaces a missing portion of the body.
- b. Prevents or corrects a physical deformity or malfunction.
- c. Supports a weak or deformed portion of the body.

..."

SECTION 24.10.(b) G.S. 105-164.14 is amended by adding a new subsection to read:

"(m) Professional Motor Racing Vehicles. – A professional motorsports racing team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motor racing vehicle. For the purposes of this subsection, 'accessories' includes instrumentation, telemetry, consumables, and paint. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

SECTION 24.10.(c) This section becomes effective July 1, 2007, and applies to purchases made on or after that date.

JOINT FILING OPTIONS

SECTION 24.11.(a) G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife shall file a single income tax return jointly if (i) ~~their~~ whose federal taxable income is determined on a joint federal return and (ii) ~~both spouses are residents of this State or both spouses have~~ shall file a single income tax return jointly if each spouse either is a resident of this State or has North

Carolina taxable ~~income~~ income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

SECTION 24.11.(b) This section is effective for taxable years beginning on or after January 1, 2006.

PARENTAL SAVINGS TRUST FUND TAX DEDUCTION

SECTION 24.12.(a) G.S. 105-134.6(d) is amended by adding two new subdivisions to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

- (4) A taxpayer whose adjusted gross income (AGI), as calculated under the Code, is less than the amount listed in this subdivision may deduct from taxable income the amount, not to exceed seven hundred fifty dollars (\$750.00), contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is one thousand five hundred dollars (\$1,500).

<u>Filing Status</u>	<u>AGI</u>
<u>Married, filing jointly</u>	<u>\$100,000</u>
<u>Head of Household</u>	<u>80,000</u>
<u>Single</u>	<u>60,000</u>
<u>Married, filing separately</u>	<u>50,000</u>

- (5) The taxpayer shall add to taxable income the amount deducted from taxable income in a prior taxable year under subdivision (4) of this subsection to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary."

SECTION 24.12.(b) This section is effective for taxable years beginning on or after January 1, 2006, and is repealed for taxable years beginning on or after January 1, 2011.

SALES TAX ON RAILROAD CARS

SECTION 24.13.(a) G.S. 105-164.4B(b) reads as rewritten:

"(b) Periodic Rental Payments. – When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

- (1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, ~~and transportation equipment~~, and a utility company railway car.
- (2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.
- (3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.
- (4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section."

SECTION 24.13.(b) G.S. 105-164.14 is amended by adding a new subsection to read:

(a2) Utility Companies. – A utility company 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 accessories for a railway car or locomotive the utility company operates. 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, 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 railway cars and locomotives 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 railway cars and locomotives 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 24.13.(c) This section becomes effective July 1, 2006. Subsection (a) of this section applies to lease or rental payments made on or after that date. Subsection (b) of this section applies to purchases made on or after that date.

WAGE STANDARD – CERTAIN MANUFACTURERS

SECTION 24.14.(a) G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county, the term 'location' may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the

average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 24.14.(b) This section is effective for taxable years beginning on or after January 1, 1996.

REAL PROPERTY TAX DONATION CREDIT

SECTION 24.15.(a) Section 3 of S.L. 2001-335, as amended by Section 1 of S.L. 2004-134, reads as rewritten:

"**SECTION 3.** This act becomes effective for taxable years beginning on or after January 1, 2002. Section 2 of this act expires for taxable years beginning on or after January 1, 2006, 2007."

SECTION 24.15.(b) This section is effective when it becomes law.

AGRARIAN GROWTH ZONES – BILL LEE

SECTION 24.16.(a) Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.3B. Agrarian growth zone designation.

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.

- (1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.
- (2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
- (3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon request of a local government, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that meets the conditions of subsection (a) of this section. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all agrarian growth zones with a description of their boundaries.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

- (1) At least fifty percent (50%) of the parcel is located within the zone.
- (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
- (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

(d) Relationship With Enterprise Tiers. – For the purpose of the wage standard requirement of G.S. 105-129.4, the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, an agrarian growth zone is considered an enterprise tier one area. For

all other purposes, an agrarian growth zone has the same enterprise tier designation as the county in which it is located."

SECTION 24.16.(b) G.S. 105-129.2 reads as rewritten:

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

(1) Agrarian growth zone. – An area designated as an agrarian growth zone pursuant to G.S. 105-129.3B.

(1a) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

..."

SECTION 24.16.(c) G.S. 105-129.6(a1) reads as rewritten:

"(a1) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer must pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each credit the taxpayer claims or intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars (\$1,500) per taxpayer per taxable year. This fee does not apply to any credit the taxpayer claims or intends to claim with respect to a location that is in a development zone ~~as defined in G.S. 105-129.3A~~ or agrarian growth zone. If the taxpayer claims or intends to claim a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid.

The Secretary of Revenue shall retain three-fourths of the proceeds of the fee imposed in this section for the costs of administering and auditing the credits allowed in this Article. The Secretary of Revenue shall credit the remaining proceeds of the fee imposed in this section to the Department of Commerce for the costs of administering this Article. The proceeds of the fee are receipts of the Department to which they are credited."

SECTION 24.16.(d) G.S. 105-129.7(b)(1) reads as rewritten:

"(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone or agrarian growth zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier designation of that place. In addition, for jobs that are located in a development zone, the number of those jobs that are filled by residents of the development zone."

SECTION 24.16.(e) G.S. 105-129.8 reads as rewritten:

"§ 105-129.8. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more full-time employees, and hires an additional full-time employee during the taxable year to fill a new position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development

zone or agrarian growth zone, the amount of the credit is increased by four thousand dollars (\$4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

(a1) Positions. – A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The number of new positions a taxpayer fills during the taxable year is determined by subtracting the highest number of full-time employees the taxpayer had in this State at any time during the 12-month period preceding the beginning of the taxable year from the number of full-time employees the taxpayer has in this State at the end of the taxable year.

(a2) Installments. – The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the additional employee was hired and is conditioned on the taxpayer's continued employment in this State of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees in this State falls below the number of full-time employees the taxpayer had in this State in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(a3) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone or agrarian growth zone to an area that is not a development zone or agrarian growth zone, the remaining installments of the credit must be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone or agrarian growth zone designation for that year even though the employees are not hired that year. In the case of an interstate air courier that has or is constructing a hub in this State and in the case of an eligible major industry, the applicable time period is seven years. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the applicable commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone or agrarian growth zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and

development zone or agrarian growth zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the applicable period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3."

SECTION 24.16.(f) G.S. 105-129.9 reads as rewritten:

"§ 105-129.9. Credit for investing in machinery and equipment.

...

(d) Expiration. – As used in this subsection, the term "disposed of" means disposed of, taken out of service, or moved out of State.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that machinery and equipment unless the cost of that machinery and equipment is offset in the same taxable year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone or agrarian growth zone to an area that is not a development zone or agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible

machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone or agrarian growth zone designation for the year the letter was signed. In the case of an interstate air courier that has or is constructing a hub in this State and in the case of an eligible major industry, the applicable time period is seven years. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone or agrarian growth zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone or agrarian growth zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the applicable period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the applicable period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

SECTION 24.16.(g) This section is effective for taxable years beginning on or after January 1, 2006, and applies to business activities occurring on or after that date.

INTERNET DATA CENTER FACILITIES – TAX EXEMPTION

SECTION 24.17.(a) G.S. 105-164.3 is amended by adding two new subdivisions to read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

- (8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:
 - a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by NAICS.
 - b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
 - c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area pursuant to G.S. 105-129.3, regardless of any subsequent change in county enterprise tier status.
 - d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

...

- (23a) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002."

SECTION 24.17.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"§ 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:

...

- (55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
- c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for the eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for the electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 24.17.(c) This section becomes effective October 1, 2006, and applies to sales made on or after that date.

OYSTER SHELL TAX CREDIT

SECTION 24.18.(a) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.48. Credit for recycling oyster shells.

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar (\$1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(d) No Double Benefit. – No deduction is allowed under G.S. 105-130.5(b)(5) or G.S. 105-130.9 for the donation of oyster shells for which a credit is claimed under this section.

(e) Documentation of Credit. – To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2011."

SECTION 24.18.(b) G.S. 105-130.9(4) reads as rewritten:

"(4) The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 or G.S. 105-130.48 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

SECTION 24.18.(c) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.30. Credit for recycling oyster shells.

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to one dollar (\$1.00) per bushel of oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer.

(c) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the succeeding five years.

(d) Documentation of Credit. – To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer.

(e) No Double Benefit. – A taxpayer who claims a credit under this section must add back to taxable income any amount deducted under the Code for the donation of the oyster shells.

(f) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2011."

SECTION 24.18.(d) G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. **Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Part an amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under ~~G.S. 105-151.12 or G.S. 105-151.14.~~ G.S. 105-151.12, 105-151.14, or 151.30. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 24.18.(e) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(5a) The market price of the oyster shells for which the taxpayer claims a credit for the taxable year under G.S. 105-151.30."

SECTION 24.18.(f) G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

...

(8) G.S. 105-151.30. Credit for recycling oyster shells."

SECTION 24.18.(g) This section is effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after January 1, 2011.

REDUCE SALES TAX ON ELECTRICITY SOLD TO MANUFACTURERS

SECTION 24.19.(a) G.S. 105-164.4(a)(1f)b. is repealed.

SECTION 24.19.(b) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(1i) The rate of two and six-tenths percent (2.6%) applies to the sales price of electricity that is measured by a separate meter or another separate device and sold to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants."

SECTION 24.19.(c) This section becomes effective July 1, 2007, and applies to sales made on or after that date.

PART XXIV-A. OTHER TAX CHANGES

NO SALES TAX REFUND FOR ALCOHOL PURCHASES

SECTION 24A.1.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

"(d1) Alcoholic Beverages. – The refunds authorized by this section do not apply to purchases of alcoholic beverages, as defined in G.S. 18B-101."

SECTION 24A.1.(b) This section becomes effective July 1, 2006, and applies to purchases made on or after that date.

FRANCHISE TAX LOOPHOLE CLOSING

SECTION 24A.2.(a) G.S. 105-114(b) reads as rewritten:

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

- (1) City. – Defined in G.S. 105-228.90.
- (1a) Code. – Defined in G.S. 105-228.90.
- (2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company that elects to be taxed as a C Corporation under the Code, but does not otherwise include a limited liability company.
- (3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.
- (4) Income year. – Defined in G.S. 105-130.2(5)."

SECTION 24A.2.(b) G.S. 105-114.1 reads as rewritten:

"§ 105-114.1. Limited liability companies.

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

- (1) Affiliated group. – Defined in section 1504 of the Code.
- (2) Capital interest. – The right under a limited liability company's governing law to receive a percentage of the company's assets upon dissolution after payments to creditors.
- (3) Entity. – A person that is not a human being.
- (4) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.
- (5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a C Corporation under the Code.

(b) Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(c) Constructive Ownership. – Ownership of the capital interests in a noncorporate limited liability company is determined by reference to the constructive ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A) and (B) of the Code with the following modifications:

- (1) The term "capital interest" is substituted for "stock" each place it appears.
- (2) A noncorporate limited liability company and any noncorporate entity other than a partnership, estate, or trust is treated as a partnership.
- (3) The operating rule of section 318(a)(5) of the Code applies without regard to section 318(a)(5)(C).

(d) No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of capital stock base under G.S. 105-122(b).

(e) Affiliated Group. – If the owner of the capital interests in a noncorporate limited liability company is an affiliated group of corporations, the percentage to be included pursuant to subsection (b) of this section by each group member that is doing business in this State is determined by multiplying the capital interests in the noncorporate limited liability company owned by the affiliated group by a fraction. The numerator of the fraction is the capital interests in the noncorporate limited liability company owned by the group member, and the denominator of the fraction is the capital interests in the noncorporate limited liability company owned by all group members that are doing business in this State.

(f) Exemption. – This section does not apply to assets owned by a noncorporate limited liability company if the total book value of the noncorporate limited liability company's assets never exceeded one hundred fifty thousand dollars (\$150,000) during its taxable year.

(g) Timing. – Ownership of the capital interests in a noncorporate limited liability company is determined as of the last day of its taxable year. The adjustments pursuant to subsections (b) and (d) of this section must be made to the owner's next following return filed under this Article. If a noncorporate limited liability company and a corporation or an affiliated group of corporations have engaged in a pattern of transferring assets between them with the result that each did not own the capital interests on the last day of its taxable year, the ownership of the capital interests in the noncorporate limited liability company must be determined as of the last day of the corporation or group of corporations' taxable year.

(h) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 24A.2.(c) Article 3 of Chapter 105 is amended by adding a new section to read:

"§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22 and the annual report fee for limited liability companies under G.S. 57C-1-22(a). The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 24A.2.(d) This section is effective for taxable years beginning on or after January 1, 2007.

EXPANSION OF ROYALTY REPORTING OPTION

SECTION 24A.3.(a) G.S. 105-130.7A reads as rewritten:

"§ 105-130.7A. Royalty income reporting option.

(a) Purpose. – Royalty payments received for the use of ~~trademarks~~ intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient.

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

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyrights, patents, and trademarks.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of ~~a trademark~~ intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.

(5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:

a. A related entity.

b. A component member.

c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

(6) Royalty payment. – Either of the following:

a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before

operating loss deduction and special deductions for the taxable year under the Code.

- b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.

- (7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.

- (8) Use. – Use of ~~a trademark~~ intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the ~~trademark~~ intangible property.

(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets either of the following conditions:

- (1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

- (2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct."

SECTION 24A.3.(b) This section is effective for taxable years beginning on or after January 1, 2006.

FINANCE LAW STUDIES

SECTION 24A.4.(a) The Revenue Laws Study Committee shall study the issues listed in this subsection and shall make a report on these studies, including any recommendations or legislative proposals, to the 2007 General Assembly.

- (1) Providing income tax deductions for all contributions to section 529 plans regardless of the amount of the contribution or the particular plan to which a contribution is made.

- (2) The effectiveness of the tax credit for certain real property donations.

- (3) The effectiveness of the tax credits for qualifying expenses of a production company and whether those credits should be modified to more closely conform to the general practice in North Carolina of not requiring an addback of a deduction for the expenses for which a credit is claimed.

- (4) The effectiveness of tax credits in encouraging the production and use of renewable fuels in the State.

SECTION 24A.4.(b) The Legislative Research Commission may study the issue of how to improve access to health insurance. The study shall include a review of the recommendations of the House Select Committee on Health Care and the study by an independent actuarial firm engaged by the Senate to conduct a detailed actuarial analysis of Senate Bill 1965: Healthy NC. The study shall include an evaluation of the effectiveness of tax credits in increasing access to health insurance and issues related to

the proposal contained in Senate Bill 1965. The Legislative Research Commission shall make a report, including any recommendations or legislative proposals, to the 2007 General Assembly on any study conducted pursuant to this subsection.

PART XXVI. SET REGULATORY FEES

SET UTILITIES REGULATORY FEE

SECTION 26.1.(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, 2006.

SECTION 26.1.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2006-2007 fiscal year is two hundred thousand dollars (\$200,000).

SET INSURANCE REGULATORY FEE

SECTION 26.2. 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 2006 calendar year.

PART XXVIII. MISCELLANEOUS PROVISIONS

EXECUTIVE BUDGET ACT APPLIES

SECTION 28.1. 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 28.2.(a) The Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated June 30, 2006, 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 28.2.(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 2006-2007 fiscal year 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 General Assembly amended the requested adjustments to the budgets submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission 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 base budget was adjusted in accordance with the base budget cuts and additions that were set out in the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated June 30, 2006.

- (2) Transfers of funds supporting programs were made in accordance with the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated June 30, 2006.

SECTION 28.2.(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 2006-2007

SECTION 28.3. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2006-2007 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2006-2007 fiscal year.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 28.4.(a) Except where expressly repealed or amended by this act, the provisions of S.L. 2005-276 and S.L. 2005-345 remain in effect.

SECTION 28.4.(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 2006-2007 fiscal year in S.L. 2005-276 and S.L. 2005-345 that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

REPEAL CERTAIN PROVISIONS OF THE CONTINUING APPROPRIATIONS ACT.

SECTION 28.4A. Provisions of S.L. 2006-52 that enact matters identical to those enacted in this act are repealed.

EFFECT OF HEADINGS

SECTION 28.5. 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 28.6. 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 28.7. Except as otherwise provided, this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 2:36 p.m. on the 10th day of July, 2006.

H.B. 1834**Session Law 2006-67**

AN ACT TO CHANGE THE BONDING REQUIREMENTS FOR UP TO TWO DEPARTMENT OF TRANSPORTATION PERFORMANCE-BASED CONTRACTS FOR ROUTINE MAINTENANCE AND OPERATIONS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 28.10 of S.L. 2005-276 reads as rewritten:

"SECTION 28.10.(a) 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.

"SECTION 28.10.(b) For contracts authorized under this section, notwithstanding G.S. 44A-26(a)(1) and (a)(2), the Department of Transportation may require the bonds issued pursuant to Article 3 of Chapter 44A of the General Statutes for public construction to be provided on a periodic basis and in the amount to cover that specific period rather than for the entire project duration."

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:50 p.m. on the 10th day of July, 2006.

H.B. 1835**Session Law 2006-68**

AN ACT TO AUTHORIZE THE BOARD OF TRANSPORTATION TO APPROVE STANDARD DEPARTMENT OF TRANSPORTATION CONTRACT PROVISIONS ON DIFFERING SITE CONDITIONS, SUSPENSIONS OF WORK, AND CHANGES IN CHARACTER OF WORK, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1(a) reads as rewritten:

"(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and ~~23 C.F.R. § 635.131(a)~~ 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions ~~provided in~~ for differing site conditions.

suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted Transportation and approved by the Board of Transportation in accordance with the Administrative Procedure Act. Transportation."

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:51 p.m. on the 10th day of July, 2006.

H.B. 1908

Session Law 2006-69

AN ACT TO REWRITE THE LAWS GOVERNING THE EDUCATION OF CHILDREN WITH SPECIAL NEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. Parts 1-3, 5-6, and 10-14 of Article 9 of Chapter 115C of the General Statutes are repealed.

SECTION 2. Article 9 of Chapter 115C of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"Article 9.

"Special Education. Education of Children With Disabilities.

"Part 1A. General Provisions.

"§ 115C-106.1. State goal.

The goal of the State is to provide full educational opportunity to all children with disabilities who reside in the State.

"§ 115C-106.2. Purposes.

(a) The purposes of this Article are to (i) ensure that all children with disabilities ages three through 21 have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (ii) ensure that the rights of these children and their parents are protected; and (iii) enable the State Board of Education and local educational agencies to provide for the education of all children with disabilities.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

(c) Notwithstanding any other section of this Article, the State Board of Education may set standards for the education of children with disabilities that are higher than those required by IDEA.

"§ 115C-106.3. Definitions.

The following definitions apply in this Article:

- (1) "Child with a disability" means a child with at least one disability who because of that disability requires special education and related services.
- (2) "Disability" includes mental retardation; hearing impairment, including deafness; speech or language impairment; visual

- impairment, including blindness; serious emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments, specific learning disability, or other disability as may be required to be included under IDEA. For a child ages three through seven, this term also includes developmental delay.
- (3) "Dispute" means a disagreement between the parties.
- (4) "Free appropriate public education" means special education and related services that:
- a. Are provided at public expense, under public supervision and direction, and without charge;
 - b. Meet the standards of the State Board;
 - c. Include an appropriate preschool, elementary school, or secondary school education in the State; and
 - d. Are provided in conformity with an individualized education program.
- (5) "Hearing officers" include administrative law judges as defined in G.S. 150B-2(1) and hearing review officers.
- (6) "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under this act.
- (7) "IEP Team" is as defined in IDEA.
- (8) "Individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.
- (9) "Infant or toddler with a disability" is as defined in IDEA.
- (10) "Least restrictive environment" means to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (11) "Local educational agency" includes any of the following that provides special education and related services to children with disabilities:
- a. A local school administrative unit.
 - b. A charter school.
 - c. The Department of Health and Human Services.
 - d. The Department of Correction.
 - e. The Department of Juvenile Justice and Delinquency Prevention.
 - f. Any other State agency or unit of local government.
- (12) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
- (13) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a dispute.
- (14) "Parent" means:
- a. A natural, adoptive, or foster parent;
 - b. A guardian, but not the State if the child is a ward of the State;

- c. An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, and with whom the child lives;
- d. An individual who is legally responsible for the child's welfare;
or
- e. A surrogate if one is appointed under G.S. 115C-109.2.
- (15) "Party" or "Parties" means the local educational agency or the parents, or both.
- (16) "Petition" means a request for a due process hearing as provided for under IDEA.
- (17) "Preschool child with a disability" means a child with one or more disabilities who meets all of the following criteria:
 - a. Has reached his or her third birthday and whose parents have requested services from the public schools.
 - b. Is not eligible to enroll in public kindergarten.
 - c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.
- (18) "Related services" is as defined in IDEA.
- (19) "Rules" includes rules, policies, and procedures. Rules as defined in G.S. 150B-2(8a) shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes.
- (20) "Special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. The term includes instruction in physical education and instruction conducted in a classroom, the home, a hospital or institution, and other settings.

"Part 1B. Provision of Free Appropriate Public Education.

"§ 115C-107.1. Free appropriate public education; ages.

- (a) A free appropriate public education shall be made available to the following:
 - (1) All children with disabilities who reside in the State, who are the ages of three through 21, who have not graduated from high school, and who require special education and related services.
 - (2) Any child with a disability who is receiving special education and related services and who has not graduated from high school until the end of the school year in which that child reaches the age of 22.
 - (3) Children with disabilities who require special education and related services and who are suspended or expelled from school and entitled to continuing education services as provided in IDEA.
- (b) A free appropriate public education is not required to be provided to infants and toddlers with disabilities. However, early intervention services shall be made available to these children under G.S. 143B-139.6A.
- (c) If funds are made available, the State Board and the Secretary of Health and Human Services may adopt an agreement to allow the continuation of early intervention services for children with a disability who are at least three years old but before they enter kindergarten or are eligible to enter kindergarten. If an agreement is adopted under this subsection, then a free appropriate public education is not required to be provided to any child with a disability who continues to receive early intervention services in accordance with that agreement.

(d) Nothing in this Article requires a free appropriate public education to be made available to any individual aged 18 through 21 who, in the educational placement immediately before that individual's incarceration in an adult correctional facility, was not actually identified as being a child with a disability and did not have an IEP.

"§ 115C-107.2. Duties of State Board of Education.

- (a) The State Board of Education shall adopt rules to ensure that:
 - (1) The requirements of this Article and IDEA are met.
 - (2) All educational programs under the supervision of any local educational agency for children with disabilities meet all of the following requirements:
 - a. The programs are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities.
 - b. The programs meet the State Board's educational standards.
 - c. With respect to homeless children, the programs meet the requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless Assistance Act.
- (b) The rules adopted under subsection (a) of this section shall include rules that:
 - (1) Establish standards for the programs of special education to be administered by local educational agencies and by the State Board.
 - (2) Ensure that children with disabilities are educated in the least restrictive environment.
 - (3) Ensure that local school administrative units make available special education and related services to all preschool children with disabilities whose parents request these services.
 - (4) Provide for public hearings, adequate notice of these hearings, and an opportunity for comment from the general public before the adoption of the rules required by this Article.
 - (5) Are required in order to receive federal funding under IDEA.
 - (6) Provide that, where a local educational agency finds that appropriate services are available from other public agencies or private organizations, the local educational agency may contract for those services rather than provide them directly.
 - (7) Enable local educational agencies to identify, evaluate, place, and make other educational decisions for children with disabilities.
 - (8) Provide procedural safeguards for children with disabilities and their parents.
 - (9) Designate a person in the Department of Public Instruction who is charged with receiving and responding to notices or other legal documents under Part 1D of this Article.
 - (10) Support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.
- (c) Rules adopted under this section shall be consistent with IDEA and shall comply with G.S. 115C-12(19). Local educational agencies, parents, and other individuals concerned with the education of children with disabilities shall be consulted in the development of rules adopted under this Article.

(d) The State Board shall develop forms for local educational agencies to use in order to comply with this Article. The forms must comply with G.S. 115C-12(19) and may be in an electronic format.

(e) The State Board shall provide technical assistance to local educational agencies at their request.

(f) The State Board shall develop any plans that meet the criteria of IDEA and are required to be submitted to the United States Department of Education.

(g) The State Board shall make available to hearing officers training related to IDEA and its legal interpretations in order to facilitate hearings and reviews under G.S. 115C-109.6.

"§ 115C-107.3. Child find.

(a) The Board shall require an annual census of children with disabilities, subdivided for "identified" and "suspected" children with disabilities, to be taken in each school year. Suspected children are those in the formal process of being evaluated or identified as children with disabilities. The census shall be conducted annually and shall be completed by October 15, submitted to the Governor and General Assembly and made available to the public by January 15 annually.

(b) In taking the census, the Board requires the cooperation, participation, and assistance of all local educational agencies. Therefore, each local educational agency shall cooperate and participate with and assist the Board in conducting the census.

(c) The census shall include the number of children identified and suspected with disabilities, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what local educational agency, the identity of each local educational agency having children with disabilities in its care, custody, management, jurisdiction, control, or programs, the number of children with disabilities being served by each local educational agency, and any other information or data that the Board requires. The census shall be of children with disabilities between the ages three through 21 but is not required to include children with disabilities that have graduated from high school.

"§ 115C-107.4. Monitoring and enforcement.

(a) The State Board shall monitor all local educational agencies to determine compliance with this Article and IDEA. The State Board also shall monitor the effectiveness of IEPs in meeting the educational needs of children with disabilities.

(b) The State Board shall implement an effective and efficient system of incentives and sanctions for local educational agencies in order to improve results for children with disabilities and meet the requirements of this Article and IDEA. The system, which must be based on a continuum of recognition and sanctions, shall:

- (1) Identify and recognize local educational agencies that achieve or exceed targets and indicators as determined by the State Board, demonstrate significant improvement over time, and show growth on targets and indicators as determined by each local educational agency.
- (2) Provide consequences for local educational agencies that are substantially noncompliant with statutory and regulatory requirements under this Article and IDEA.

(c) The system of incentives developed under subsection (b) of this section may include commendations, public recognition, allocation of grant funds if available, and any other incentives as considered appropriate by the State Board.

(d) The system of sanctions developed under subsection (b) of this section shall include the following:

- (1) Level One – Needs Assistance: When the State Board determines (i) a local school educational agency has been in noncompliance for two years and (ii) that agency needs assistance in implementing the requirements of this Article and IDEA, the State Board shall take one or more of the following actions:
 - a. The Board may direct the local educational agency to allocate additional time and resources for technical assistance and guidance related to areas of noncompliance.
 - b. The Board may impose special conditions on that agency's application for IDEA funds and receipt of State funds.
 - c. The Board may direct how that local educational agency utilizes IDEA and State funds to address the remaining findings of noncompliance. The local educational agency must track the use of these funds to show how the funds are targeted to address areas of noncompliance.
- (2) Level Two – Needs Intervention: If the State Board determines (i) that the local educational agency has been in noncompliance for three years and (ii) that agency needs assistance in implementing this Article and IDEA, the following apply:
 - a. The Board may take any of the actions described in subdivision (1) of this subsection.
 - b. The Board shall withhold, in whole or in part, any further payments of IDEA and State funds to the agency.
 - c. The Board shall require the agency to enter into a compliance agreement.
- (3) Level Three – Needs Substantial Intervention: In addition to the sanctions described in subdivisions (1) and (2) of this subsection, if at any time the State Board determines a local educational agency (i) needs substantial intervention in implementing the requirements of this Article and IDEA, or (ii) has established a substantial failure to comply with this Article and IDEA, the Board shall take one or more of the following actions:
 - a. The Board shall direct the agency to implement a compliance agreement, billed to that agency.
 - b. The Board shall recover IDEA and State funds.
 - c. The Board shall refer the agency for appropriate enforcement under State or federal law.

(e) In addition to the consequences required under subsections (b) and (d) of this section, the State Board shall develop sanctions for local educational agencies that fail to implement a corrective action or hearing decision.

"§ 115C-107.5. Annual reports.

The State Board shall report annually to the Joint Legislative Education Oversight Committee on the implementation of this Article and the educational performance of children with disabilities. Each annual report shall include a copy of the following documents that were submitted, received, or made public during the year: (i) the most recent State performance plan and any amendments to that plan submitted to the Secretary of Education, (ii) compliance and monitoring reports submitted to the

Secretary of Education, (iii) the annual report submitted to the Secretary of Education on the performance of the State under its performance plan, and (iv) any other information required under IDEA to be made available to the public. In addition, the annual report shall include an analysis of the educational performance of children with disabilities in the State and a summary of disputes under Part 1D of this Chapter. The report shall be filed no later than October 15 each year and may be filed electronically.

"§ 115C-107.6. Duties of local educational agencies.

(a) Each local educational agency, in providing for the education of children with disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the State Board under this Article. In addition, each local educational agency shall have in effect policies, procedures, and programs that are consistent with this Article, IDEA, and rules adopted by the State Board.

(b) No child with disabilities shall be prevented from attending the public schools of the local educational agency in which the child's parents or legal guardian resides or from which the child receives services or from attending any other public program of free appropriate public education based solely on the fact that the child has a disability. If it appears the child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention, the local school administrative unit shall confer with the appropriate Department of Health and Human Services or Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in that program and development of the child's individualized education program.

(c) No matriculation or tuition fees or other fees or charges shall be required or asked of children with disabilities or their parents except those fees or charges that are required uniformly of all public school pupils. The provision of a free appropriate public education within the facilities of the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention may not prevent that Department from charging for other services or treatment.

(d) Each child with a disability shall be educated in accordance with that child's IEP and in the least restrictive environment for that child.

(e) Each local educational agency may use the forms developed under G.S. 115C-107.2(d).

"§ 115C-107.7. Discipline.

The policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

"Part 1C. Interagency Coordination.

"§ 115C-108.1. State Board lead agency.

(a) The Board shall cause all local educational agencies to provide special education and related services to children with disabilities in their care, custody, management, jurisdiction, control, or programs.

(b) The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with disabilities extends to and over the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

(c) All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies; all duties, responsibilities,

rights, and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction, and their divisions and agencies. However, with respect to children with disabilities who are residents or patients of any State-operated or State-supported residential treatment facility, including a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, or any of their divisions and agencies, the Board may contract with the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise, and approve any plans for special education and related services to those residents.

(d) The Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with disabilities in their care, custody, or control. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on that department and when other procedural due process requirements, substantially equivalent to those required under this Article and IDEA, are assured in programs of special education and related services furnished to children with disabilities served by that department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

(e) The Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local school administrative units and the programs and agencies of the Departments of Health and Human Services, Correction, and Juvenile Justice and Delinquency Prevention.

"§ 115C-108.2. Interlocal cooperation.

The Board, any two or more local educational agencies, and any other agency and any State department, agency, or division having responsibility for the education, treatment, or habilitation of children with disabilities may enter into interlocal cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment, or habilitation of these children within the jurisdiction of the agency or unit, and shall do so when it is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are educationally appropriate to the children with disabilities for whose benefit the undertaking is made and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children.

"Part 1D. Procedural Safeguards.

"§ 115C-109.1. Handbook for parents.

The State Board of Education shall make available to parents a handbook of procedural safeguards. This handbook for parents shall be made available at least once each school year, except that a copy also shall be given to the parent (i) upon the initial referral or parental request for an evaluation; (ii) upon the first occurrence of the filing of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv) upon any revision to the content of the handbook. This handbook for parents shall include a full explanation of the procedural safeguards under this Article and IDEA, be written in the native language of the parent unless it clearly is not feasible to do so, be written in an easily understood manner, and include information required under IDEA to be included.

The State Board shall place a current copy of the handbook for parents on its Internet Web site.

"§ 115C-109.2. Adult children with disabilities; surrogate parents.

(a) When a child with a disability reaches the age of 18, all of the following apply:

- (1) Notices required under this Article shall be provided to both the child and the child's parent.
- (2) All other rights accorded to parents under this Article and IDEA transfer to the child.
- (3) The local educational agency shall notify the child and the child's parent of these transfer rights.

(b) Notwithstanding subsection (a) of this section, for a child with a disability who has reached the age of majority under State law and who has not been determined to be incompetent but is determined to not have the ability to provide informed consent with respect to his or her education program, the State Board shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility under this section.

(c) A reasonable effort must be made to appoint a surrogate for a child with a disability within 30 days of a determination that one of the following conditions exists and that the child needs a surrogate:

- (1) The parents of that child are not known;
- (2) The parents, after reasonable efforts, cannot be located; or
- (3) The child is a ward of the State.

(d) A person must be eligible under IDEA to be appointed as a child's surrogate.

"§ 115C-109.3. Access to records; opportunity for parents to participate in meetings.

(a) Each local educational agency shall provide an opportunity for the parents of a child with a disability to examine all records relating to that child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.

(b) Local educational agencies may release the records of a child with a disability only as permitted under State or federal law. The parents of a child with a disability may have access to the child's records and may read, inspect, and copy all and any records, data, and information maintained by a local educational agency with respect to that child. Parents, upon their request, are entitled to have those records, data, and information fully explained, interpreted, and analyzed for them by the staff of the

agency, unless specifically prohibited by court order. If a request is made under this subsection, the local educational agency shall honor the request within not more than 45 days after it is made or in time for the individual who made the request to prepare for a meeting under subsection (a) of this section, whichever is sooner.

(c) The student and the student's parents may add written explanations or clarifications to the records, data, and information and may request the expunction of incorrect, outdated, misleading, or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having been asked to do so by the parent, the parent may appeal that decision under G.S. 115C-45(c)(2).

"§ 115C-109.4. Mediation.

(a) It is the policy of this State to encourage local educational agencies and parents to seek mediation involving any dispute under this Article, including matters arising before or after filing a petition under G.S. 115C-109.6.

(b) Mediation under this section must meet the following requirements:

(1) The mediation must be voluntary on the part of both parties.

(2) Mediation shall not be used to deny or delay a parent's right to an impartial hearing under G.S. 115C-109.6, or to deny any other rights afforded under this Article or IDEA.

(3) The mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The State Board may establish procedures to offer to parties that do not choose to use the mediation process an opportunity to meet with a disinterested party, as provided under IDEA, who can encourage the use and explain the benefits of the mediation process to the parties. This meeting must be at a time and location convenient to the parents.

(d) The State Board shall maintain a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of special education and related services. When mediation is requested, the Exceptional Children Division of the Department of Public Instruction shall assign a mediator from this list of mediators.

(e) The State shall bear the cost of the mediation process, including the costs of meetings described under subsection (c) of this section, unless the parties opt to select a mediator other than the mediator assigned under subsection (d) of this section or if the parties opt to use an alternative method of dispute resolution.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(g) Evidence of statements made and conduct occurring in a mediation are confidential, are not subject to discovery, and are inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. Mediators shall not be compelled in any civil proceeding to testify or produce evidence concerning statements made and conduct occurring in a mediation.

(h) When resolution is reached to resolve the dispute through the mediation process, the parties shall execute a legally binding agreement that:

(1) Sets forth the agreement.

(2) States that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent impartial hearing under G.S. 115C-109.6 or in any civil proceeding.

- (3) Is signed by both the parent and a representative of the local educational agency who has the authority to bind that agency.
- (4) Is enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States.

(i) In addition to mediation as provided by this section, the parties may participate in a mediated settlement conference as provided by G.S. 150B-23.1. In addition, the parties may agree to use other dispute resolution methods or to use mediation in other circumstances, including after a request for formal administrative review is filed, to the extent permitted under State and federal law.

"§ 115C-109.5. Prior written notice.

(a) The local educational agency shall provide prompt written notice to parents whenever that agency proposes to initiate or change, or refuses to initiate or change (i) the identification, evaluation, or educational placement of a child, or (ii) the provision of a free appropriate public education to a child with a disability. The local educational agency shall document that all required notices have been sent to and received by parents.

(b) This prior written notice shall be in the native language of the parents, unless it clearly is not feasible to translate it, and shall contain all of the following information:

- (1) A description of the action proposed or refused by the local educational agency.
- (2) An explanation of why the local educational agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report that agency used as a basis for the proposed or refused action.
- (3) A statement that the parent of a child with a disability has protection under the procedural safeguards of this Article and IDEA and, if this notice is not the initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained.
- (4) Sources for parents to contact to obtain assistance in understanding this Article and IDEA.
- (5) A description of other options considered by the IEP Team and the reason why those options were rejected.
- (6) A description of the factors that are relevant to the local educational agency's proposal or refusal.
- (7) Any other information required to be included under IDEA.

"§ 115C-109.6. Impartial due process hearings.

(a) Any party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination. The party filing the petition must notify the other party and the person designated under G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

(b) Notwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition. The issues for review under this section are limited to those set forth in

subsection (a) of this section. The party requesting the hearing may not raise issues that were not raised in the petition unless the other party agrees otherwise.

(c) The one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent.

(d) The hearing shall be conducted in the county where the child attends school or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a different venue.

(e) The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public.

(f) Subject to G.S. 115C-109.7, the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Following the hearing, the administrative law judge shall issue a written decision regarding the issues set forth in subsection (a) of this section. The decision shall contain findings of fact and conclusions of law. Notwithstanding Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and is not subject to further review unless appealed to the Review Officer under G.S. 115C-109.9.

(g) A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitation period for appeal as set forth in G.S. 115C-109.9.

(h) In addition to the petition, the parties shall simultaneously serve a copy of all pleadings, agreements, and motions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall simultaneously serve a copy of all orders and decisions under this Part with the person designated by the State Board under G.S. 115C-107.2(b)(9).

(i) Nothing in this section shall be construed to preclude a parent from filing a separate due process petition on an issue separate from a petition already filed.

(j) The State Board, through the Exceptional Children Division, and the State Office of Administrative Hearings shall develop and enter into a binding memorandum of understanding to ensure compliance with the statutory and regulatory procedures and timelines applicable under IDEA to due process hearings and to hearing officers' decisions, and to ensure the parties' due process rights to a fair and impartial hearing. This memorandum of understanding shall be amended if subsequent changes to IDEA are made. The procedures and timelines shall be made part of the Board's procedural safeguards that are made available to parents and the public under G.S. 115C-109.1 and G.S. 115C-109.5.

"§ 115C-109.7. Resolution session.

(a) Within 15 days of receiving notice of the parent's petition filed under G.S. 115C-109.6 and before the opportunity for an impartial hearing, the local educational agency shall convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the petition. This meeting shall include a representative of the agency who has decision-making authority on behalf of that agency and may not include an attorney of the local educational agency unless the parent is accompanied by an attorney. If the parent plans

to be accompanied by an attorney under this section, the parent must give prior written notice of this fact to the agency. The purposes of the meeting are (i) for the parent to have an opportunity to discuss the petition and the facts that form the basis of the petition and (ii) for the local educational agency to have the opportunity to resolve the dispute.

(b) The parent and the local educational agency jointly may agree in writing to waive the meeting under subsection (a) of this section or to use the mediation process described in G.S. 115C-109.4.

(c) If the local educational agency does not resolve the dispute to the satisfaction of the parents within 30 days of the agency's receipt of the petition, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

(d) If a resolution is reached to resolve the dispute at a meeting under subsection (a) of this section, the parties shall execute a legally binding agreement that is:

- (1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency;
- (2) Enforceable in any State administrative forum provided for in IDEA, any State court of competent jurisdiction, or in a district court of the United States; and
- (3) Filed with the person designated by the State Board to receive notices and with the Office of Administrative Hearings.

(e) If the parties execute an agreement under subsection (d) of this section, either party may void the agreement by providing written notice within three business days of the agreement's execution to the person designated by the State Board to receive notices, the Office of Administrative Hearings, and the other party. Notwithstanding subsection (c) of this section, upon receipt of this notice, the impartial hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall commence.

"§ 115C-109.8. Procedural issues.

(a) In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits.

(b) A hearing officer may order a local educational agency to comply with procedural requirements under this Article and IDEA.

"§ 115C-109.9. Review by review officer; appeals.

(a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section. The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to

the attorneys of record and the Office of Administrative Hearings. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section.

(b) A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education. No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

(c) The State Board may enforce the final decision of the administrative law judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of the Review Officer, by ordering a local educational agency:

- (1) To provide a child with appropriate education;
- (2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
- (3) To reimburse parents for reasonable private school placement costs in accordance with this Article and IDEA when it is determined that the local educational agency did not offer or provide the child with appropriate education and the private school in which the parent placed the child was an approved school and did provide the child an appropriate education.

(d) Any party that does not have the right to appeal under this Part and any party who is aggrieved by the decision of the Review Officer under this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1415.

(e) Except as provided under IDEA, upon the filing of a petition under G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child must remain in the child's then-current educational placement or, if applying for initial admission to a public school, the child must be placed in the public school. Notwithstanding this subsection, the parties may agree in writing to a different educational placement for the child during the pendency of any proceedings under this Part.

"Part 1E. Special Education and Related Services Personnel.

"§ 115C-110.1. Teacher qualifications.

The Board shall adopt rules covering the qualifications of and standards for licensure of teachers, teacher assistants, speech-language pathologists, school psychologists, and others involved in the education and training of children with disabilities.

"§ 115C-110.2. Interpreters/transliterators.

Each interpreter or transliterator employed by a local educational agency to provide services to hearing-impaired students must annually complete 15 hours of job-related training that has been approved by the local educational agency.

"§ 115C-110.3 through 110.5. [Reserved]

"Part 1F. Budgeting; Funds.

"§ 115C-111.1. Out-of-state students; eligibility for State funds.

Notwithstanding any policy or rule adopted by the State Board of Education, if a local school administrative unit provides services to a student under a current IEP from another state while a determination is being made regarding the student's eligibility for services as a child with disabilities in North Carolina, the local school administrative unit is entitled to receive State funding to serve the student while the determination is

being made. If the student is later determined not to qualify for services in North Carolina, the local school administrative unit is not required to repay State funds received while the determination is being made.

"§ 115C-111.2. Contracts with private service providers.

Local educational agencies furnishing special education and related services to children with disabilities may contract with private special education facilities or service providers to furnish any of these services that the public providers are unable to furnish.

"§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.

(a) Notwithstanding any other State law and without regard for the place of domicile of a parent, the cost of a free appropriate public education for a child with disabilities who is placed in or assigned to a group home or foster home, under State and federal law, shall be borne by the local board of education in which the group home or foster home is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal year after all State and federal funding has been exhausted.

(b) The State Board of Education shall use State and federal funds appropriated for children with disabilities to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. Local school administrative units may submit a Special State Reserve Program application for foster home or group home children whose special education and related services costs exceed the per child group home allocation.

(c) The Department shall review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services.

"§ 115C-111.4. Nonreduction.

Notwithstanding any of the other provisions of this Article, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by local school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with disabilities, without regard to which local educational agency has the child in its care, custody, control, or program.

"§ 115C-111.5. Allocation of federal funds.

Whenever any federal monies for the special education and related services for children with disabilities are made available, these funds shall be allocated according to a formula designed by the Board consistent with federal laws and regulations. This formula shall ensure equitable distribution of resources and shall be implemented as funds are made available from federal and State appropriations.

"§ 115C-111.6. Obligation to provide services for preschool children with disabilities.

State funds appropriated to the public schools to implement preschool services for children with disabilities under this Article and IDEA shall be used to provide special education and related services to preschool children with disabilities. These State funds shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

Preschool children with disabilities will continue to be served by all other State funds to which they are otherwise entitled.

"Part 1G. Council on Educational Services for Exceptional Children.

"§ 115C-112.1. Establishment; organization; powers and duties.

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of a minimum of 24 members to be appointed as follows: four ex officio members; one individual with a disability and one representative of a private school appointed by the Governor; one member of the Senate and one parent of a child with a disability between the ages of birth and 26 appointed by the President Pro Tempore of the Senate; one member of the House of Representatives and one parent of a child with a disability appointed by the Speaker of the House of Representatives; and 14 members appointed by the State Board of Education. The State Board shall appoint members who represent individuals with disabilities, teachers, local school administrative units, institutions of higher education that prepare special education and related services personnel, administrators of programs for children with disabilities, charter schools, parents of children with disabilities, a State or local official who carries out activities under the federal McKinney-Vento Homeless Assistance Act, vocational, community, or business organizations concerned with the provision of transition services, and others as required by IDEA. The majority of members on the Council shall be individuals with disabilities or parents of children with disabilities. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The Board shall adopt rules to carry out this subsection.

Ex officio members of the Council shall be the following:

- (1) The Secretary of Health and Human Services or the Secretary's designee.
- (2) The Secretary of Juvenile Justice and Delinquency Prevention or the Secretary's designee.
- (3) The Secretary of Correction or the Secretary's designee.
- (4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education is two years. The term for members appointed by the State Board of Education is four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting. The Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The Council shall:

- (1) Advise the Board with respect to unmet needs within the State in the education of children with disabilities.
- (2) Comment publicly on rules, policies, and procedures proposed by the Board regarding the education of children with disabilities.

- (3) Assist the Board in developing evaluations and reporting on data to the Secretary of Education under the federal Individuals with Disabilities Education Act (IDEA), as amended.
- (4) Advise the State Board in developing corrective action plans to address findings identified in federal monitoring reports required under the federal Individuals with Disabilities Education Act (IDEA), as amended.
- (5) Advise the State Board in developing and implementing policies relating to the coordination of services for children with disabilities.
- (6) Carry out any other responsibility as designated by federal law or the State Board."

SECTION 3.(a) G.S. 115C-81(b) reads as rewritten:

"(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

- (1) A core curriculum for all students that takes into account the special needs of ~~children and includes appropriate modifications for the learning disabled, the academically or intellectually gifted students, and the students with discipline and emotional problems;~~children;
- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with ~~special needs~~ disabilities and, in particular, include appropriate modifications;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
- (12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I."

SECTION 3.(b) G.S. 115C-105.25(b)(4) reads as rewritten:

"(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

- ...
- (4) Funds allocated for children with ~~special needs, disabilities,~~ for students with limited English proficiency, and for driver's education shall not be transferred.

..."

SECTION 3.(c) G.S. 115C-149 reads as rewritten:

"§ 115C-149. Policy. Chemically dependent children excluded from provisions of Article 9.

The General Assembly of North Carolina hereby declares that the policy of the State is to ensure that an appropriate education is provided for drug and alcohol addicted children; however, drug and alcohol addicted children are not "children with ~~special needs~~" disabilities" within the meaning of ~~G.S. 115C-109~~ G.S. 115C-106.3(1) unless because of some other condition they meet that definition."

SECTION 3.(d) G.S. 115C-233 reads as rewritten:

"§ 115C-233. Operation of summer schools.

Each local school administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by local boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by ~~the provisions of G.S. 115C-116, Article 9 of this Chapter, and G.S. 115C-366(b) and 115C-367 to 115C-370.~~ Boards of education of local school administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the local school administrative unit by the tax-levying authority, and from any other revenues available for the purpose."

SECTION 3.(e) G.S. 115C-238.29F(d)(4) reads as rewritten:

"(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with ~~special needs~~ disabilities."

SECTION 3.(f) G.S. 115C-238.29H(a) reads as rewritten:

"§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school:

- (1) An amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with ~~special needs~~ disabilities and for the allocation for children with limited English proficiency;
- (2) An additional amount for each child attending the charter school who is a child with ~~special needs~~ disabilities; and
- (3) An additional amount for children with limited English proficiency attending the charter school, based on a formula adopted by the State Board.

In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual adjustments to the amount allocated to a charter school based on its enrollment growth in school years subsequent to the initial year of operation.

In the event a child with ~~special needs~~ disabilities leaves the charter school and enrolls in a public school during the first 60 school days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with ~~special needs~~ disabilities

enrolls in a charter school during the first 60 school days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with ~~special needs-disabilities.~~"

SECTION 3.(g) G.S. 115C-242 reads as rewritten:

"§ 115C-242. Use and operation of school buses.

Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:

- (1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Article: Provided, that children enrolled in a Headstart program which is housed in a building owned and operated by a local school administrative unit where school is being conducted may be transported on public school buses, so long as the contractual arrangements made cause no extra expense to the State: Provided further, that children with ~~special needs-disabilities~~ may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

...

- (5) Local boards of education, under rules ~~and regulations~~ adopted by the State Board of Education, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with ~~special needs, such as mentally retarded children and children with physical defects, disabilities,~~ and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with ~~special-needs-disabilities~~ may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide ~~such-those~~ children with a free appropriate public education.

..."

SECTION 3.(h) G.S. 115C-250 reads as rewritten:

"§ 115C-250. Authority to expend funds for transportation of children with special needs.disabilities.

(a) The State Board of Education and local boards of education may expend public funds for transportation of ~~handicapped-children with special-needs-disabilities~~ who are unable because of their ~~handicap-disability~~ to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide ~~such-these~~ children with a free appropriate ~~education, including its duty under G.S. 115C-115. education under Article 9 of this Chapter.~~ At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of ~~exceptional children with disabilities~~ may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules ~~and regulations~~ concerning the construction and equipment of these buses and minibuses.

The Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of ~~handicapped-children with special-needs-disabilities~~ who are unable because of their ~~handicap-disability~~ to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide ~~such-these~~ children with a free appropriate public ~~education, education under Article 9 of this Chapter.~~

If a local area mental health center places a child with ~~special-needs-a disability~~ in an educational program, the local area mental health center shall pay for the transportation of the child, ~~if handicapped and unable because of the handicap-child who is unable due to the disability~~ to ride the regular school ~~buses, buses~~ to the program.

(b) Funds appropriated for the transportation of children with ~~special-needs disabilities~~ may be used to pay transportation safety assistants employed in accordance with ~~the provisions of~~ G.S. 115C-245(e) for buses to which children with ~~special-needs disabilities~~ are assigned."

SECTION 3.(i) G.S. 115C-366.2 reads as rewritten:

"§ 115C-366.2. Applicability to certain persons.

For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident of a place which is not the person's place of domicile, because: (i) of the residence of a parent, guardian, or legal custodian who is a student, employee or faculty member, of a college or university, or a visiting scholar at the National Humanities Center; or (ii) the child is placed in or assigned to a group home, foster home, or other similar facility or institution, other than a child covered by ~~G.S. 115C-140.1(a); G.S. 115C-111.3(a);~~ or (iii) the child resides with a legal custodian who is not the child's parent or guardian, or (iv) the child resides in a pre-adoptive home following placement by a county department of social services or a licensed child-placing agency, those sections shall be applied by substituting the word "residing" for the word "domiciled," by substituting the

word "residence" for the word "domicile," and by substituting the word "residents" for the word "domiciliaries". For purposes of this section, "legal custodian" means the person or agency that has been awarded legal custody of the child by a court.

This section shall not be construed to affect the ability of any person to acquire a new domicile."

SECTION 3.(j) G.S. 115C-367 reads as rewritten:

"§ 115C-367. Assignment on certain bases prohibited.

No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where local school administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts: Provided, however, that the board of education of a local school administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient.

The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116~~ Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116~~ Part 1D of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370 shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of a local school administrative unit."

SECTION 3.(k) G.S. 115C-371 reads as rewritten:

"§ 115C-371. Assignment to special education programs.

Assignment of students to special education programs is subject to ~~the provisions of G.S. 115C-116.~~ Article 9 of this Chapter."

SECTION 3.(l) G.S. 115C-391 reads as rewritten:

"§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

...

(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

- (1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or
- (2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h). The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students

with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

...

(d3) A local board of education or superintendent shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a school-sponsored curricular or extracurricular activity off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established under Article 9 of this Chapter for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

...

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with Article 9 of this Chapter and with federal laws and regulations.

..."

SECTION 3.(m) G.S. 115C-397.1 reads as rewritten:

"§ 115C-397.1. Management and placement of disruptive students.

If, after a teacher has requested assistance from the principal two or more times due to a student's disruptive behavior, the teacher finds that the student's disruptive behavior continues to interfere with the academic achievement of that student or other students in the class, then the teacher may refer the matter to a school-based committee. The teacher may request that additional classroom teachers participate in the committee's proceedings. For the purposes of this section, the committee shall notify the student's parent, guardian, or legal custodian and shall encourage that person's participation in the proceedings of the committee concerning the student. ~~A student is not required to be screened, evaluated, or identified as a child with special needs under this section.~~ Nothing in this section requires a student to be screened, evaluated, or identified as a child with a disability under Article 9 of this Chapter. The committee shall review the matter and shall take one or more of the following actions: (i) advise the teacher on managing the student's behavior more effectively, (ii) recommend to the principal the transfer of the student to another class within the school, (iii) recommend to the principal a multidisciplinary ~~diagnosis and~~ evaluation of the student, (iv) recommend to the principal that the student be assigned to an alternative learning program, or (v) recommend to the principal that the student receive any additional services that the school or the school unit has the resources to provide for the student. If the principal does not follow the recommendation of the committee, the principal shall provide a written explanation to the committee, the teacher who referred the matter to the

committee, and the superintendent, of any actions taken to resolve the matter and of the reason the principal did not follow the recommendation of the committee.

This section shall be in addition to the supplemental to disciplinary action taken in accordance with any other law. The recommendation of the committee is final and shall not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student to refer a disciplinary matter to this committee or to have the matter of the student's behavior referred to this committee before any discipline is imposed on the student."

SECTION 3.(n) G.S. 122C-3(13c) reads as rewritten:

"(13c) "Eligible infants and toddlers" means children with or at risk for developmental delays or atypical development until:

- a. They have reached their third birthday;
- b. Their parents have requested to have them receive services in the preschool program for ~~handicapped~~—children with disabilities established pursuant to Part 14 of Article IX under Article 9 of Chapter 115C of the General Statutes; and
- c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third ~~birthday~~.birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-106.4(c)."

SECTION 3.(o) The catch line to Part 13A of Chapter 143B of the General Statutes reads as rewritten:

"Part 13A. Interagency Coordinating Council for ~~Handicapped~~—Children with Disabilities from Birth to Five Years of Age."

SECTION 3.(p) The catch line to G.S. 143B-179.6 reads as rewritten:

"§ **143B-179.6. Interagency Coordinating Council for ~~Handicapped~~—Children with Disabilities from Birth to Five Years of Age; agency cooperation.**"

SECTION 3.(q) G.S. 143B-216.40 reads as rewritten:

"§ **143B-216.40. Establishment; operations.**

There are established, and there shall be maintained, the following schools for the deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North Carolina School for the Deaf at Morganton (K-12). The Department of Health and Human Services shall be responsible for the operation and maintenance of the schools.

~~The Board of Directors of the North Carolina Schools for the Deaf shall advise the Department and shall adopt rules and regulations concerning the schools as provided in G.S. 115C-124 and 143B-173."~~

SECTION 4.(a) Article 25A of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ **115C-375.5. Education for pregnant and parenting students.**

(a) Pregnant and parenting students shall receive the same educational instruction or its equivalent as other students. A local school administrative unit may provide programs to meet the special scheduling and curriculum needs of pregnant and parenting students. However, student participation in these programs shall be voluntary, and the instruction and curriculum must be comparable to that provided other students.

(b) Local boards of education shall adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or any program, class, or extracurricular activity because they are pregnant or parenting students. The policy shall include, at a minimum, all of the following:

- (1) Local school administrative units shall use, as needed, supplemental funds from the At-Risk Student Services allotment to support programs for pregnant and parenting students.
- (2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and parenting students shall be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds medically necessary. This includes absences due to the illness or medical appointment during school hours of a child of whom the student is the custodial parent.
- (3) Homework and make-up work shall be made available to pregnant and parenting students to ensure that they have the opportunity to keep current with assignments and avoid losing course credit because of their absence from school and, to the extent necessary, a homebound teacher shall be assigned."

SECTION 4.(b) This section applies beginning with the 2006-2007 school year.

SECTION 5. Article 3 of Chapter 150B of the General Statutes is amended by adding the following new section to read:

"§ 150B-22.1. Special education petitions.

(a) Notwithstanding any other provision of this Chapter, timelines and other procedural safeguards required to be provided under IDEA and Article 9 of Chapter 115C of the General Statutes must be followed in an impartial due process hearing initiated when a petition is filed under G.S. 115C-109.6 with the Office of Administrative Hearings.

(b) The administrative law judge who conducts a hearing under G.S. 115C-109.6 shall not be a person who has a personal or professional interest that conflicts with the judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of, and the ability to understand, IDEA and legal interpretations of IDEA by federal and State courts. The judges are encouraged to participate in training developed and provided by the State Board of Education under G.S. 115C-107.2(h).

(c) For the purpose of this section, the term "IDEA" means The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended, and its regulations."

SECTION 6.(a) The State Board of Education, through the Division of Exceptional Children and the Office of Administrative Hearings, shall develop its memorandum of understanding as required under G.S. 115C-109.6(j), as created in Section 2 of this act, by October 31, 2006. The memorandum of understanding shall establish procedures and timelines that are efficient and meet the criteria of IDEA so that impartial hearings are expeditiously handled. At the same time, the procedures and timelines should recognize there are some complicated issues that may require additional time to resolve. In particular, this memorandum should address at least the following:

- (1) The reasons, number of days, and means for providing notice to parties.
- (2) When a petition is initiated for the purpose of determining when a decision shall be reached. Specifically, this shall address when mediation is begun before and after a petition is filed and when no mediation is begun.

- (3) Whether mediated conferences subject to Chapter 150B of the General Statutes are appropriate under IDEA and, if so, when they should occur and how they will affect the timelines.
- (4) The number of extensions to be allowed and the basis on which an extension may be granted.
- (5) The standard of review for cases going to review officers.
- (6) Any other procedural or tolling issue that the State Board of Education or the Office of Administrative Hearings considers necessary to address.

SECTION 6.(b) The State Board and the Office of Administrative Hearings shall report jointly to the House Select Committee on the Education of Students with Disabilities by November 15, 2006, on the memorandum of understanding. This report shall make any recommendations as to funding issues that must be resolved or statutory changes that are needed, or both, in order to implement the memorandum of understanding.

SECTION 7. The State Board of Education shall ensure that the Allotment Policy Manual includes, in fiscal year 2006-2007 and thereafter, the following language related to local education agencies' use of funds allotted for textbooks:

"Local Education Agencies (LEAs) shall use their State textbook funds to provide, to the same extent as is provided to nondisabled students, textbooks for students with disabilities. LEAs also shall, at a minimum, provide teachers of children with disabilities with the same teachers' editions provided to teachers of nondisabled students."

SECTION 8. Section 7 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:52 p.m. on the 10th day of July, 2006.

S.B. 1485

Session Law 2006-70

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ANNUALLY REPORT CERTAIN INFORMATION TO THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 reads as rewritten:

"§ 93B-2. Annual reports required; contents; open to inspection.

(a) Each occupational licensing board shall file with the Secretary of State ~~and with the Attorney General an annual financial report, and State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee~~ an annual report containing all of the following information:

- (1) The address of the board, and the names of its members and ~~officers; officers.~~
- (2) The number of persons who applied to the board for ~~examination; examination.~~

- (3) The number who were refused ~~examination~~; examination.
- (4) The number who took the ~~examination~~; examination.
- (5) The number to whom initial licenses were ~~issued~~; issued.
- (6) The number who applied for license by reciprocity or ~~comity~~; comity.
- (7) The number who were granted licenses by reciprocity or ~~comity~~; comity.
- (8) The number of licenses suspended or ~~revoked~~; and revoked.
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
- (10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
- (11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) Each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous 12-month period.

(c) The reports required by this section shall be open to public inspection."

SECTION 2. This act becomes effective July 1, 2006. The first reports required by G.S. 93B-2, as amended by Section 1 of this act, are due no later than July 1, 2007.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:56 p.m. on the 10th day of July, 2006.

S.B. 1121

Session Law 2006-71

AN ACT TO AMEND THE BROWNFIELDS PROPERTY REUSE ACT OF 1997.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.31(b)(3) reads as rewritten:

- "(3) "Brownfields property" or "brownfields site" means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (~~42 U.S.C. § 9601 et seq.~~) (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 2. G.S. 130A-310.31(b)(5) reads as rewritten:

- "(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means ~~that cleanup or remediation of contamination~~ complies contaminant concentrations for each

environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.
site-specific contaminant levels established pursuant to this Part."

SECTION 3. G.S. 130A-310.31(b)(10) reads as rewritten:

"(10) "Prospective developer" means any person ~~who desires~~with a bona fide, demonstrable desire to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property."

SECTION 4. G.S. 130A-310.34(b) reads as rewritten:

"(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least ~~60-30~~ days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment."

SECTION 5. G.S. 130A-310.34(c) reads as rewritten:

"(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within ~~30-21~~ days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least ~~30-15~~ days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least ~~30-15~~ days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting."

SECTION 6. G.S. 130A-310.37(c) reads as rewritten:

"(c) The Department shall not enter into a brownfields agreement for a ~~brownfields site that is identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition).~~site listed on the National Priorities List pursuant to 42 U.S.C. § 9605."

SECTION 7. This act becomes effective 1 January 2007.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:58 p.m. on the 10th day of July, 2006.

S.B. 1372**Session Law 2006-72**

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY COLLECT PROPERTY TAXES FOR CERTAIN NEWLY ANNEXED PROPERTY OVER A THREE-YEAR PERIOD AND DELAY THE ACCRUAL OF INTEREST ACCORDINGLY.

The General Assembly of North Carolina enacts:

SECTION 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order.

SECTION 2. If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 2:59 p.m. on the 10th day of July, 2006.

S.B. 1591**Session Law 2006-73**

AN ACT TO EXTEND THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2005-442 reads as rewritten:

"SECTION 11. ~~Report.~~Reports. – The Commission shall submit an interim report to the General Assembly and the Environmental Review Commission no later than 15 January 2007 and may submit interim reports at other times at its discretion. The Commission shall submit a final report, including any findings and recommendations, ~~report its findings and recommendations~~ to the General Assembly and the Environmental Review Commission on or before ~~1 November 2006,~~15 April 2008, at which time the Commission shall terminate."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:00 p.m. on the 10th day of July, 2006.

S.B. 1738

Session Law 2006-74

AN ACT TO PROVIDE FOR TRIAL REHABILITATION PERIODS FOR PERSONS WHO HAVE BEEN RECEIVING LONG-TERM DISABILITY BENEFITS UNDER THE DISABILITY INCOME PLAN OF NORTH CAROLINA TO ALLOW THOSE PERSONS TO ATTEMPT A RETURN TO WORK WITHOUT BEING PENALIZED, AND TO EXTEND THE EFFECTIVE DATE OF CHANGES TO THE DISABILITY PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-101(20) reads as rewritten:

"(20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104 and shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in ~~G.S. 135-105.~~ G.S. 135-105 or within the long-term disability period as provided in G.S. 135-106."

SECTION 2. Effective August 1, 2007, G.S. 135-101(20), as rewritten by Section 1 of this act, reads as rewritten:

"(20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in ~~G.S. 135-104~~ and G.S. 135-104; shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in ~~G.S. 135-105 or within the long-term disability period as provided in G.S. 135-106.~~ G.S. 135-105; and shall mean a return to service in any capacity and in any position provided the salary earned is equal to or greater than the salary upon which the long-term disability benefit is based immediately preceding the return to service, if the return occurs within the long-term disability period as provided in G.S. 135-106."

SECTION 3. G.S. 135-106 is amended by adding a new subsection to read:

"(c1) During the long-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 36 months of continuous service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence regardless of whether the

beneficiary is unable to continue in service due to the same incapacity or a different incapacity.

A beneficiary who, during a period of trial rehabilitation, is unable to continue in service may be entitled to a restoration of the long-term disability benefit provided that the Medical Board certifies that the beneficiary is disabled in accordance with the laws in effect at the time of the Board's original approval for long-term disability benefits, either due to the same or a different incapacity, notwithstanding the requirement the incapacity has been continuous. In the event that the Medical Board determines that the long-term disability benefit should be restored, the restored benefit should be calculated in accordance with G.S. 135-106(b); should include any post-disability benefit adjustments as provided by G.S. 135-108; and should not be reduced by an amount equal to a primary Social Security disability benefit to which the beneficiary might be entitled had the beneficiary been awarded Social Security benefits until the beneficiary has been eligible to receive long-term disability benefits for 36 months, including any period the beneficiary elected to receive any salary continuation in lieu of the long-term benefit, but not including any period of trial rehabilitation.

A beneficiary who returns to service for a period of trial rehabilitation and who has continued in service for greater than 36 continuous months shall again become a participant, and any subsequent incapacity shall be treated as a new incapacity causing a new waiting period to begin. Such a beneficiary may be entitled to additional long-term disability benefits on account of the new incapacity provided the beneficiary meets all other requirements notwithstanding the requirement of five years of membership service within the 96 calendar months prior to becoming disabled or the cessation of continuous salary continuation payments."

SECTION 4.(a) The introductory language of Section 4 of S.L. 2004-78, as amended by Section 29.30B(a) of S.L. 2005-276, reads as rewritten:

"**SECTION 4.** Effective August 1, ~~2006~~, 2007, G.S. 135-106(a), as rewritten by Section 3 of this act, reads as rewritten:"

SECTION 4.(b) Section 6 of S.L. 2004-78, as amended by Section 29.30B(b) of S.L. 2005-276, 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, ~~2006~~, 2007, and applies only to persons who are not vested in the disability plan in question on that date. The remainder of this act becomes effective when it becomes law."

SECTION 5. Section 2 of this act becomes effective August 1, 2007. Section 4 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 2002.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:01 p.m. on the 10th day of July, 2006.

H.B. 836

Session Law 2006-75

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP PROGRAMS FOR USE IN SCHOOLS ON THE MEANING AND IMPORTANCE OF MEMORIAL DAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"§ 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:

...

- (33) Duty to develop recommended programs for use in schools on Memorial Day. – The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall recognize the significance of Memorial Day."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 3:02 p.m. on the 10th day of July, 2006.

H.B. 1133

Session Law 2006-76

AN ACT TO DESIGNATE ALL AREAS OF ANY BUILDING OCCUPIED BY THE GENERAL ASSEMBLY AS NONSMOKING AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-597 reads as rewritten:

"§ 143-597. **Nonsmoking areas in State-controlled buildings.**

(a) All of the following areas may be designated as nonsmoking in buildings owned, leased, or occupied by State government:

- (1) Any library open to the public.
- (2) Any museum open to the public.
- (3) Any area established as a nonsmoking area, so long as at least twenty percent (20%) of the interior space of equal quality to that of the nonsmoking area shall be designated as a smoking area, unless physically impracticable. If physically impracticable, the person in charge of the facility shall provide an adequate smoking area within the facility as near as feasible to twenty percent (20%) of the interior space.
- (4) Any indoor space in a State-controlled building such as an auditorium, arena, or coliseum, or an appurtenant building thereof; except that a designated area for smoking shall be established in lobby areas.
- (5) Any educational buildings primarily involved in health care instruction.
- (6) University of North Carolina health services facilities, wellness centers, enclosed physical education facilities, enclosed student recreational centers, laboratories, or residence halls, provided that each constituent institution shall make a reasonable effort to provide

residential smoking rooms in residence halls in proportion to student demand for those rooms.

(a1) All areas of any building occupied by the General Assembly shall be designated as nonsmoking areas.

(b) Any area designated as nonsmoking or smoking shall be established by the appropriate department, institution, agency, or person in charge of the State-controlled building or ~~area~~. area, except as specified in subsection (a1). The person in charge of the building shall conspicuously post or cause to be posted, in any area designated as a smoking or nonsmoking area, one or more signs stating that smoking is or is not permitted in the area.

(c) Where a nonsmoking area is designated, existing physical barriers and ventilation systems shall be used where appropriate to minimize smoke from adjacent areas. This subsection shall not be construed to require fixed structural or other physical modification in providing these areas or to require installation or operation of any heating, ventilating, or air-conditioning system in any manner which adds expense."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:03 p.m. on the 10th day of July, 2006.

H.B. 1974

Session Law 2006-77

AN ACT TO AUTHORIZE THE REEMPLOYMENT OF CERTAIN RETIRED COMMUNITY COLLEGE EMPLOYEES WHO WERE PROVIDED INCORRECT INFORMATION ABOUT THE WAITING PERIOD FOR REEMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, a member of the Teachers' and State Employees' Retirement System who was employed by a community college, who filed for retirement before August 31, 2005, for an effective retirement date of November 1, 2005, and who was provided with incorrect information about the period of time a retired member must wait before returning to employment in order to continue receiving retirement benefits, may be reemployed by the State under the reemployment law that existed at the time the member filed for retirement.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:03 p.m. on the 10th day of July, 2006.

H.B. 2129

Session Law 2006-78

AN ACT TO ESTABLISH THE COMMUNITY CONSERVATION ASSISTANCE PROGRAM IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 11. Community Conservation Assistance Program.

"§ 143-215.74M. Community Conservation Assistance Program.

(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation Commission.

(b) Purposes. – The purpose of the Program shall be to reduce the input of nonpoint source pollution into the waters of the State. The Program shall be subject to the following requirements and limitations:

- (1) Subject to subdivision (5) of this subsection, priority designations for inclusion in the Program for State funding shall be established by the Soil and Water Conservation Commission. The Soil and Water Conservation Commission shall allocate the cost share and technical assistance funds under the Program.
- (2) Areas shall be included in the Program as the funds are appropriated and technical assistance becomes available from the local Soil and Water Conservation District.
- (3) Funding may be provided to assist community conservation practices approved by the Soil and Water Conservation Commission.
- (4) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted applicant providing twenty-five percent (25%) of the cost, which may include in-kind support of the practice, with a maximum of seventy-five thousand dollars (\$75,000) per year to each applicant.
- (5) Priority designation for inclusion in the Program for State funding shall be given to projects that improve water quality. To be eligible for cost-share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.
- (6) Participation in the Program shall be voluntary.

(c) Availability of Funds. – State funds for the Program shall remain available until expended.

(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

- (1) The Director of the Division of Soil and Water Conservation or the Director's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
- (4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
- (5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.

- (6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
- (7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
- (8) The President of the North Carolina Conservation District Employees Association or the President's designee.
- (9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
- (10) The Director of the Division of Water Quality or the Director's designee.
- (11) The Director of the Division of Forest Resources or the Director's designee.
- (12) The Director of the Division of Land Resources or the Director's designee.
- (13) The Director of the Division of Coastal Management or the Director's designee.
- (14) The Director of the Division of Water Resources or the Director's designee.
- (15) The President of the Carolinas Land Improvement Contractors Association or the President's designee.

(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review Commission and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 2. G.S. 14-234(d3) reads as rewritten:

"(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~ Part 9 of Article 21 of Chapter 143 of the General Statutes or the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met."

SECTION 3. G.S. 139-4(d) and (e) read as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

- (9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control ~~pursuant to G.S. 143-215.74~~ created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

- (10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. ~~139-8(13)~~.139-8(b).

....

(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

- (1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and
- (2) The application is approved by the Secretary of Environment and Natural Resources."

SECTION 4. G.S. 139-8(b) reads as rewritten:

"(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes or the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission."

SECTION 5. The Community Conservation Assistance Program Advisory Committee shall review the Program prior to expenditure of any funds from the Program. The Advisory Committee shall report on the findings of its Program review to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairs of the Appropriations Committees of the Senate and the House of Representatives, the Director of the Fiscal Research Division of the Legislative Services Office, and the Environmental Review Commission no later than 31 March 2007.

SECTION 6. The first report required pursuant to G.S. 143-215.74M(e), as enacted by Section 1 of this act, is due on or before 31 January 2008.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 3:04 p.m. on the 10th day of July, 2006.

H.B. 2165

Session Law 2006-79

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT AND NATURAL RESOURCES, AND TO AMEND OR REPEAL VARIOUS ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS.

SECTION 1. G.S. 113-174.2(c)(6)i. reads as rewritten:

- "i. Resident ~~Elderly~~ Age 65 Lifetime CRFL. – \$15.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 2. G.S. 113-351(c)(3)e. reads as rewritten:

- "e. Resident ~~Elderly~~ Age 65 Lifetime Unified Sportsman/Coastal Recreational Fishing License. – \$30.00. This license shall be issued only to an individual who is 65 years of age or older and who is a resident of the State."

SECTION 3. G.S. 143B-291(a)(1) reads as rewritten:

- "(1) One member who is the ~~chairman~~ chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, ex officio."

SECTION 4. G.S. 143B-291(g) reads as rewritten:

"(g) Staff. – All clerical and other services required by the Commission shall be supplied by the Secretary of ~~the Department~~ Environment and Natural Resources."

SECTION 5. G.S. 143B-292 reads as rewritten:

"§ 143B-292. North Carolina Mining Commission – officers.

The North Carolina Mining Commission shall have a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman at his pleasure~~ chair at the pleasure of the Governor. The ~~vice-chairman~~ vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 6. G.S. 143B-293 reads as rewritten:

"§ 143B-293. North Carolina Mining Commission – meetings.

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least five members."

SECTION 7. G.S. 143B-296 reads as rewritten:

"§ 143B-296. Soil and Water Conservation Commission – officers.

The Soil and Water Conservation Commission shall have a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair. The ~~chairman~~ chair shall be designated by the Governor from among the members of the Commission to serve as ~~chairman~~ chair at the pleasure of the Governor. The ~~vice-chairman~~ vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of ~~his~~ the vice-chair's regularly appointed term."

SECTION 8. G.S. 143B-297 reads as rewritten:

"§ 143B-297. Soil and Water Conservation Commission – meetings.

The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the ~~chairman~~ chair or upon the written request of at least four members."

SECTION 9. G.S. 143B-299 reads as rewritten:

"§ 143B-299. Sedimentation Control Commission – members; selection; compensation; meetings.

(a) Creation; Membership. – There is hereby created in the Department of Environment and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

- (1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;
- (2) A person to be nominated by the Board of the North Carolina Home Builders Association;
- (3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;
- (4) The president, vice-president, or general counsel of a North Carolina public utility company;
- (5) The Director of the North Carolina Water Resources Research Institute;
- (6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
- (7) A member of the State Soil and Water Conservation Commission;
- (8) A member of the Environmental Management Commission;
- (9) A soil scientist from the faculty of North Carolina State University;
- (10) Two persons who shall be representatives of nongovernmental conservation interests; and
- (11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. – The Commission members shall be appointed by the Governor. All Commission members, except the person ~~filling position number five, as specified above, appointed under subdivision (5) of subsection (a) of this section,~~ shall serve staggered terms ~~of office~~ of three years and until their successors are appointed and duly qualified. The person ~~filling position number five appointed under subdivision (5) of subsection (a) of this section~~ shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as ~~he the~~ person continues as Director of the Water Resources Research Institute. The terms ~~of office~~ of members ~~filling positions two, four, seven, and eight appointed under subdivisions (2), (4), (7), and (8) of subsection (a) of this section~~ shall expire on 30 June of years evenly divisible by three. The terms ~~of office~~ of members ~~filling positions one, three, and ten appointed under subdivisions (1), (3), and (10) of subsection (a) of this section~~ shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms ~~of office~~ of members ~~filling positions six, nine, and eleven, appointed under subdivisions (6), (9), and (11) of subsection (a) of this section~~ shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Except for the person ~~filling position number five, appointed under subdivision (5) of subsection (a) of this section,~~ no member of the Commission shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, ~~nonfeasance or, in the case of members filling positions five, six, seven, eight, nine, and eleven as specified above, nonfeasance, or~~ because they no longer possess the required qualifications for membership. ~~In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the~~

~~member being replaced.~~ The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) ~~Chairman.~~ Chair. – The Governor shall designate a member of the Commission to serve as ~~chairman.~~ chair.

(c) Compensation. – The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. – The Commission shall meet at the call of the ~~chairman~~ chair and shall hold special meetings at the call of a majority of the members."

SECTION 10. G.S. 143B-300(c) reads as rewritten:

"(c) The Commission may by rule delegate any of its powers, other than the power to adopt rules, to the Secretary of Environment and Natural Resources or ~~his~~ the Secretary's designee."

PART II. REPORTS CONSOLIDATION.

SECTION 11. G.S. 113-206(f) reads as rewritten:

"(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

~~To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:~~

- ~~(1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;~~
- ~~(2) The cost of resolving these claims;~~
- ~~(3) The number of unresolved claims; and~~
- ~~(4) Payments made to acquire claims by condemnation."~~

SECTION 12. Section 11 of S.L. 2002-4 reads as rewritten:

"**Section 11.** The Environmental Management Commission shall study the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO₂) beyond those required by G.S. 143-215.107D, as enacted by Section 1 of this act. The Environmental Management Commission shall consider the availability of emissions reduction technologies, increased cost to consumers of electric power, reliability of electric power supply, actions to reduce emissions of oxides of nitrogen (NOx) and sulfur dioxide

(SO₂) taken by states and other entities whose emissions negatively impact air quality in North Carolina or whose failure to achieve comparable reductions would place the economy of North Carolina at a competitive disadvantage, and the effects that these reductions would have on public health, the environment, and natural resources, including visibility. In its conduct of this study, the Environmental Management Commission may consult with the Utilities Commission and the Public Staff. The Environmental Management Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission annually beginning 1 September ~~2005-2007.~~"

SECTION 13. G.S. 143-215.107C(c) is repealed.

SECTION 14. G.S. 143B-279.12(e) reads as rewritten:

"(e) No later than ~~October 1, 2004, and annually thereafter,~~ 1 March of each year, the Department of Environment and Natural Resources shall report to the ~~House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division,~~ Division and the Environmental Review Commission the number of environmental permits subject to this section that took more than 90 days to issue or deny, the types of permits those were, the reasons for the extended processing time of those permits, and how the time within which the permit was actually issued or denied compared with the projected time frame provided to the applicant by the Department as required by this section. Based on the data gathered under this subsection, the Department shall include in its annual report recommendations regarding permit time frames for all major permits issued by the Department."

SECTION 15. G.S. 147-12(b) reads as rewritten:

"(b) The Department of Transportation, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, and the Division of Marine Fisheries in the Department of Environment and Natural Resources shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the agency's litter enforcement, litter prevention, and litter removal efforts. The Administrative Office of the Courts shall deliver to the Governor by February 1 ~~and August 1~~ of each year detailed information on the enforcement of the littering laws of the State, including the number of charges and convictions under the littering laws of the State. The Governor shall gather the information submitted by the respective agencies and deliver a consolidated ~~semiannual~~ annual report on or before March 1 ~~and September 1~~ of each year to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources."

SECTION 16. G.S. 130A-295.02(m) reads as rewritten:

"(m) The Department shall report annually on or before 1 ~~September~~ October to the Environmental Review Commission on the implementation of the resident inspectors program."

SECTION 17. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:05 p.m. on the 10th day of July, 2006.

H.B. 2200**Session Law 2006-80**

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"§ 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, The the Secretary of Environment and Natural Resources and or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when delegated the authority by the Commissioner of Agriculture, the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources regional environmental health specialist or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for

an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130."

SECTION 2. Article 22 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-481. Food defense.

The Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock."

SECTION 3. Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:06 p.m. on the 10th day of July, 2006.

H.B. 2195**Session Law 2006-81**

AN ACT TO PROVIDE LIABILITY PROTECTION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, ~~nor~~ and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include a any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements,

compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 3:07 p.m. on the 10th day of July, 2006.

H.B. 688

Session Law 2006-82

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"§ 90A-70. Purpose.

It is the purpose of this Article to protect the environment and public health, safety, and welfare by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise or conduct the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"§ 90A-71. Definitions.

The following definitions apply in this Article:

- (1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
- (2) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.
- (3) 'Conventional wastewater system' has the same meaning as in G.S. 130A-343(a)(3).
- (4) 'Department' means the Department of Environment and Natural Resources.
- (5) 'Inspector' means a person who conducts an inspection of an on-site wastewater system at any time after the local health department has issued an operation permit pursuant to G.S. 130A-337.
- (6) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.

- (7) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

"§ 90A-72. Certification required; applicability.

(a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system in the State without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system without being certified as an inspector at the required level of certification for the specified system.

(b) Applicability. – This Article does not apply to the following:

- (1) A person who is employed by, or performs labor and services for, a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector.
- (2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.
- (3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.
- (4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.
- (5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
- (6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- (7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

"§ 90A-73. Creation and membership of the Board.

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

- (1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
 - (2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.
 - (3) One member appointed by the Governor who is an employee of the Division of Environmental Health of the Department to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
 - (4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
 - (5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
 - (6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.
 - (7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.
 - (8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
 - (9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by the North Carolina Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Dual Office Holding. – Service on the Board may be in addition to any other office a person is entitled to hold.

(e) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(f) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(g) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

(h) Meetings. – The Board shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members of the Board.

(i) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"§ 90A-74. Powers and duties of the Board.

The Board shall have the following general powers and duties:

- (1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.
- (2) To determine the eligibility requirements for persons seeking certification pursuant to this Article.
- (3) To establish grade levels of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.
- (4) To develop and administer examinations for each grade level of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.
- (5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.
- (6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.
- (7) To maintain a record of all proceedings and make available to persons certified under this Article, and to other concerned parties, an annual report of all Board action.
- (8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.
- (9) To conduct investigations to determine whether violations of this Article or grounds for disciplining persons certified under this Article exist.

- (10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.
- (11) To conduct other services necessary to carry out the purposes of this Article.

"§ 90A-75. Expenses and fees.

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	<u>Application for basic certification</u>	<u>\$150.00</u>
(2)	<u>Application for each grade level</u>	<u>\$50.00</u>
(3)	<u>Certification renewal</u>	<u>\$100.00</u>
(4)	<u>Reinstatement of revoked or suspended certification</u>	<u>\$500.00</u>
(5)	<u>Application for on-site wastewater system inspector</u>	<u>\$200.00.</u>

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"§ 90A-76. On-Site Wastewater Certification Fund.

The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"§ 90A-77. Certification requirements.

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

- (1) Is at least 18 years of age.
- (2) Submits a properly completed application to the Board.
- (3) If the applicant has prior experience providing on-site wastewater system services, submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.
- (4) If the applicant has no prior experience, completes the basic on-site wastewater education program approved by the Board.
- (5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.
- (6) Pays the applicable fees set by the Board for the particular application and grade level.
- (7) For grade levels greater than conventional systems, passes a written or oral examination that tests the applicant's proficiency in all of the following areas:
 - a. Principles of public and environmental health associated with on-site wastewater systems.

- b. Principles of construction and safety.
- c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.
- d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(b) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the eastern, central, and western regions of the State.

(c) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant who has completed an approved training or continuing education program.

(d) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. An applicant that meets all the conditions for certification except for passage of the Board examination may take the examination on three successive occasions without having to file for a new application, pay an additional application fee, or repeat any applicable training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay an additional application fee, and repeat the training program.

(e) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars (\$25.00).

"§ 90A-78. Certification renewal.

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

- (1) Submit an application for renewal on the form prescribed by the Board.
- (2) Meet the continuing education requirements prescribed by the Board.
- (3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars (\$25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"§ 90A-79. Continuing education.

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certified contractor or inspector.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course provides useful educational information or experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"§ 90A-80. Investigation of complaints.

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall provide local health departments with notification of changes in certifications, complaints, suspensions, or reinstatements under this Article.

"§ 90A-81. Remedies.

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

- (1) A violation of this Article or a rule of the Board.
- (2) The use of fraud or deceit in obtaining or renewing a certificate.
- (3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.
- (4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Environmental Health of the Department or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

- (1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.
- (2) Gives false or forged evidence of any kind in obtaining a certificate.
- (3) Falsely impersonates a certified contractor or inspector."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

- (1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2009.
- (2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2010.
- (3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2011.
- (4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2011.
- (5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2009.
- (6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2010.
- (7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2010.
- (8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2011.
- (9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2009.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board during the 2006 Regular Session, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. Section 1 of this act is effective when this act becomes law except that G.S. 90A-72, 90A-79, and 90A-81, as enacted by Section 1 of this act, become effective 1 January 2008. Sections 2 and 3 of this act are effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

Became law upon approval of the Governor at 3:10 p.m. on the 10th day of July, 2006.

S.B. 1200**Session Law 2006-83**

AN ACT TO AMEND THE CHARTER OF THE TOWN OF SPINDALE TO ALLOW THE TOWN TO FOLLOW THE GENERAL LAW ON SCHEDULING TOWN BOARD MEETINGS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3.6 of the Charter of the Town of Spindale, being Chapter 378 of the 1975 Session Laws, reads as rewritten:

"Sec. 3.6. Meetings of the board. The regular meetings of the mayor and board of commissioners shall be ~~on the first and third Monday in each month, held in accordance with G.S. 160A-71(a),~~ but the board may hold special meetings upon call by the mayor or two members of the board, upon one day's notice, and may hold adjourned meetings from time to time in the discretion of the board."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

S.B. 1734**Session Law 2006-84**

AN ACT TO DEANNEX CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF HARRISBURG.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Harrisburg are reduced by excluding the following described property:

"Lying and being in No. 1 Township, Cabarrus County, North Carolina on the southeast side of Tom Query road and adjoining the lands of E. Kenneth Morris, Jeffery A. Marlow, Jerome F. Capel, and Leslie H. Pistone, and being more particularly described as follows:

'Beginning at a point of orientation being the intersection of Buckingham Place and Tom Query Road thence in a southwesterly direction for approximately 505' to the point of beginning being the corner of E. Kenneth Morris property (DB.548 Page 364) and on the existing right-of-way of Tom Query Road. Thence along the line of E. Kenneth Morris S 44-34-13 E 852.37' to a corner in the rear line of Jeffery A. Marlow (DB. 1274 Page 246 Lot 51 Huntwick Sect. III Mb. 20 Pg. 43). Thence along the rear lines of Jeffery A. Marlow, Jerome F. Capel (DB.#1427 Pg. 237 Lot 52 Huntwick Sect. III Mb. 20 Pg.#43) S 44-35-42 W 484.24' to a corner in the rear line of David S. Zicherman and the rear corner of Leslie H. Pistone (DB.554 Pg.#021) thence along the line of Leslie H. Pistone N 44-34-13 W 859.27' to a corner of Leslie H. Pistone and the right-of-way of Tom Query Road. Thence along the right-of-way of Tom Query Road N 45-24-41 E 484.19' to the point of Beginning. Containing 9.513 acres.'"

SECTION 2. This act is effective from and after July 13, 1998.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

S.B. 1877**Session Law 2006-85**

AN ACT TO PROVIDE MEMBERSHIP GUIDELINES FOR THE MACON-JACKSON REGIONAL AIRPORT AUTHORITY AND TO PROVIDE FOR THE FILLING OF VACANCIES IN THE AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 1997-22, as amended by S.L. 2005-219, reads as rewritten:

"**SECTION 2.** The Airport Authority shall consist of five members, ~~who~~ four of whom shall be residents of Jackson County and one which may be appointed from an adjoining North Carolina county. ~~who~~ The members shall be appointed to staggered terms of six years by the Jackson County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining two initial appointments to the Airport Authority shall be for six years. When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Jackson County Board of Commissioners who shall select one from that list to fill the unexpired term of the vacant office. Each member shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

SECTION 2. Effective January 1, 2007, the Jackson County Board of Commissioners shall fill any vacancy that occurs in the membership of the Airport Authority for any reason, to include the expiration of a term of office. The Airport Authority may make recommendations to the Board of Commissioners for consideration when filling a vacancy.

Any individual selected to fill a vacancy shall take and subscribe before the Clerk of Superior Court of Jackson County an oath of office and file the same with the Jackson County Board of Commissioners. Membership on the Jackson County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

S.B. 1903**Session Law 2006-86**

AN ACT TO AUTHORIZE THE HERTFORD COUNTY BOARD OF EDUCATION TO CONSTRUCT AND PROVIDE AFFORDABLE RENTAL HOUSING FOR TEACHERS AND OTHER LOCAL GOVERNMENT EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 66-58, G.S. 115C-518, and Article 12 of Chapter 160A of the General Statutes, or any other provision of law, and subject to the

restrictions set out in this act, the Hertford County Board of Education may contract with any person, partnership, corporation, or other business entity to construct, provide, or maintain affordable rental housing on property owned or leased by the Hertford County Board of Education or by any other person, partnership, corporation, or other business entity.

SECTION 2. Notwithstanding G.S. 66-58, G.S. 115C-518, and Article 12 of Chapter 160A of the General Statutes, or any other provision of law, the Hertford County Board of Education may rent housing units owned by the Board pursuant to this act for residential use. In renting such housing units, the Board shall give priority to Hertford County public schoolteachers and shall restrict the rental of such units exclusively to such teachers or other Hertford County Schools professional staff. The Board shall have the authority to establish reasonable rents for any such housing units and may in its discretion charge below-market rates.

SECTION 3. This act shall not exempt any affordable housing units constructed pursuant to this act from compliance with applicable building codes, zoning ordinances, or any other health and safety statutes, rules, or regulations.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

S.B. 1933

Session Law 2006-87

AN ACT TO ADAPT THE INSTALLATION DATE OF NEWLY ELECTED MEMBERS OF THE NASH-ROCKY MOUNT BOARD OF EDUCATION TO THE RECENTLY ENACTED LATER DATE FOR THE ELECTION CANVASS, AND PROVIDING FOR ELECTIONS OF THE BOARD OF TRUSTEES FOR ROANOKE RAPIDS GRADED SCHOOL DISTRICT.

The General Assembly of North Carolina enacts:

PART I. NASH-ROCKY MOUNT BOARD OF EDUCATION

SECTION 1. Section 11 of Chapter 391 of the 1991 Session Laws reads as rewritten:

"Sec. 11.(a) In the year 1994, and each two years thereafter, the members of the Nash-Rocky Mount Board of Education shall be elected for four-year terms of office on a nonpartisan basis as provided in Chapter 115C and Chapter 163 of the General Statutes, with the results determined in accordance with G.S. 163-293. The runoff election shall be held on the first Tuesday in December. The two Boards of Elections shall adopt a special absentee voting timetable for the runoff. The filing period shall be from noon on the first Friday in July until noon on the first Friday in August. Elections shall be held on the first Tuesday after the first Monday in November. Persons elected to the Nash-Rocky Mount Board of Education shall take office on the second Monday in December following their election, and the terms of their office shall date and extend from that ~~time~~ time, unless a runoff election occurs, in which case the person or persons elected in the runoff shall take office on the first Monday in January.

(b) No person shall be eligible to file for, or be elected to, the Nash-Rocky Mount Board of Education, or to serve thereon, unless he or she is a qualified voter and resident of the district from which he or she seeks to be elected. Candidates shall be voted on by the electors residing in the district from which they seek election."

PART II. ROANOKE RAPIDS GRADED SCHOOL DISTRICT

SECTION 2. Beginning with the November 2007 election, the Board of Trustees for Roanoke Rapids Graded School District shall be elected in nonpartisan elections held in odd-numbered years as provided in this Part.

SECTION 3. The Board of Trustees shall consist of nine members elected at large for six-year terms. Three members shall be elected in 2007 and every two years thereafter.

SECTION 4. The period of filing of candidates for the Board of Trustees for Roanoke Rapids Graded School District shall be the same as the offices for the City of Roanoke Rapids.

SECTION 5. If a vacancy occurs on the Board of Trustees for Roanoke Rapids Graded School District, the remaining members of the board shall appoint a person to fill that seat. The person appointed to fill the vacancy shall serve the remainder of the unexpired term of the office.

SECTION 6. The trustees so elected shall qualify, and their terms of office shall begin at the first regular scheduled board meeting in December immediately following their election in November in the year in which the election to their respective offices shall be held.

SECTION 7. The trustees at their first meeting in December of 2007 shall elect from among their number a chairman who shall serve for the two following years, and that thereafter at the first meeting in December after each election they shall elect a chairman to serve for the two following years unless the present chairman's term has not expired.

SECTION 8. The Board of Trustees of Roanoke Rapids Graded School District now holding office shall serve with the same powers, duties, and authorities as now held and exercised by them until the trustees herein provided for shall have been qualified.

SECTION 9. Nothing in this Part shall be construed to change or alter the said Roanoke Rapids Graded School District, or the duties or powers of its trustees, except the manner of their election, the time of their election, and the term of their office.

SECTION 10. All persons residing within the limits of the said Roanoke Rapids Graded School District qualified to vote in the general State and county elections shall be considered as qualified voters in elections herein provided for trustees.

SECTION 11. Chapter 42 of the Private Laws of 1931 and Chapter 177 of the Private Laws of 1933 are repealed.

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2015**Session Law 2006-88****AN ACT TO PROVIDE STAGGERED FOUR-YEAR TERMS FOR THE MAYOR AND BOARD OF COMMISSIONERS OF THE TOWN OF BATH.**

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 189 of the 1959 Session Laws reads as rewritten:

~~"SECTION 1. There shall be elected at the May, 1959 town elections four commissioners and a mayor to serve terms of two years each and until their successors are duly elected and qualified, it being the intent of this Act to increase the number of Commissioners of the Town of Bath from three to four to serve terms of two years each.~~

(a) The governing body of the Town of Bath shall consist of a Mayor and four Town Commissioners who shall be elected by all the qualified voters of the Town. At the regular election to be held in the Town of Bath in 2007 and quadrennially thereafter, a Mayor shall be elected for a four-year term.

(b) At the regular election to be held in the Town of Bath in 2007, two Commissioner seats shall be designated separately and elected to two-year terms. Successors to those two seats shall be elected in 2009 and quadrennially thereafter for four-year terms.

(c) At the regular election to be held in the Town of Bath in 2007 and quadrennially thereafter, two Commissioners shall be elected for four-year terms."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2135

Session Law 2006-89

AN ACT TO EXEMPT THE SALE OF REAL PROPERTY WHICH WAS OWNED BY THE HIGH POINT ALCOHOLIC BEVERAGE CONTROL BOARD FROM THE REQUIREMENTS OF ARTICLE 12 OF CHAPTER 160A FOR SALES THAT OCCURRED IN 2002 AND 2005.

The General Assembly of North Carolina enacts:

SECTION 1. The transfer of real property by the High Point Alcoholic Beverage Control Board located at Lot B of the property of The Mitchell Company as described in Book 5584, pages 0182 to 0184, per plats thereof recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2002, and 910 Greensboro Road, High Point, North Carolina, as described in Book 6389, pages 0107 to 0109 and recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2005, shall not be deemed invalid for failure to follow the procedures for the sale of real property outlined in Article 12 of Chapter 160A.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2136

Session Law 2006-90

AN ACT TO INCREASE THE NUMBER OF THE CITY OF HIGH POINT ABC BOARD MEMBERS FROM THREE TO FIVE AND TO ESTABLISH TERMS OF OFFICE FOR THE NEWLY APPOINTED MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article VI of Chapter 501 of the 1979 Session Laws reads as rewritten:

"ARTICLE VI.

"ALCOHOLIC BEVERAGE CONTROL.

"Sec. 6.1. Membership; term of office; appointment; vacancy.

"Sec. 6.2. Powers and duties.

"Sec. 6.3. Distribution of profit.

"Sec. 6.1. Membership; term of office; appointment; vacancy. The City of High Point ~~Board of Alcoholic Control~~ Alcoholic Beverage Control Board shall be composed of a chairman and ~~two (2)~~ four (4) other members who shall be well known for their character, ability, and business acumen. The chairman and ~~two (2)~~ other members of the Board shall serve for terms of three (3) years each on a staggered basis, with the term of one (1) member expiring each ~~year~~ year except in those years when two members' terms will expire at the same time. All appointments to the Board, including appointments to fill vacancies, shall be made by the Mayor and City Council of High Point. Compensation of the members of the ~~board of alcoholic control~~ Alcoholic Beverage Control Board shall be fixed by the council. Any member appointed to the board must be a resident of the City of High Point and in the event any member, during the term of his appointment, shall move out of the corporate limits of the City of High Point it shall be the duty of the council to appoint a person to fill the vacancy.

"Sec. 6.2. Powers and duties. The Board shall have all the powers and duties imposed by State law on county boards of alcoholic control, shall be subject to the authority of the State ~~Board of Alcoholic Control~~ Alcoholic Beverage Control Commission to the same extent as are county ~~boards of alcoholic control~~ alcoholic beverage control boards, and shall operate all city alcoholic beverage control stores in accordance with State laws regulating the operation of county alcoholic beverage control stores. The Council of the City of High Point shall, upon its request, have the right to review any action taken by said Alcoholic Beverage Control Board and to either approve or disapprove the action.

"Sec. 6.3. Distribution of profit. The City of High Point ~~Board of Alcoholic Control~~ Alcoholic Beverage Control Board shall at the end of each quarterly period following the establishment of ~~liquor~~ alcoholic beverage control stores deduct the necessary expenses of the operation of such stores, and shall expend for law enforcement, education and rehabilitation purposes not less than five percent (5%) nor more than fifteen percent (15%) of the total profits, and shall retain a sufficient and proper working capital, the amount to be determined by the board; and the entire net profits derived from the operation of ~~liquor~~ alcoholic beverage control stores in the City of High Point shall be paid as follows:

a. Twenty percent (20%) of the net profits shall be apportioned and paid into the General Fund of Guilford County.

b. Eighty percent (80%) of the net profits shall be paid to the city collector of the City of High Point and may be used by the City of High Point for any public purposes."

SECTION 2. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of ~~three~~ five members appointed for three-year terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board

members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman."

SECTION 3. Section 2 of this act applies to the City of High Point only.

SECTION 4. The Mayor and City Council of the City of High Point shall appoint additional members authorized by this act to serve initial terms that will be effective on July 1, 2006, or upon appointment, and will expire on November 15, 2009, and then for three-year terms thereafter. Members currently appointed to the Board shall continue to serve their term until it expires. In the event a member is removed or leaves the Board for any reason, the new member appointed to the Board shall fill the remainder of the unexpired term.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2148

Session Law 2006-91

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO REGULATE AND CONTROL ELECTROFISHING OF CATFISH ON THE CAPE FEAR RIVER IN BLADEN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of Chapter 363 of the 1985 Session Laws, as amended by Chapter 96 of the 1987 Session Laws, and the provisions of Chapter 129 of the 1989 Session Laws, as amended by Chapter 140 of the 1991 Session Laws, the Wildlife Resources Commission shall regulate and control the electrofishing of catfish on the Cape Fear River in Bladen County.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2406

Session Law 2006-92

AN ACT TO CHANGE THE CANDIDATE FILING PERIOD FOR THE RUTHERFORD COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of Chapter 359, Session Laws of 1973, as amended by Chapter 1165, Session Laws of 1977 (Session Laws of 1978), and by Chapter 95 of the 1983 Session Laws, reads as rewritten:

"**Sec. 4.** Each person desiring to be a candidate for the Board of Education shall file a notice of candidacy stating his or her name, age, and the district seat for which he or she is filing. ~~The filing deadline is 12:00 noon on the first Friday in June before the election.~~ The filing period is the same as for the district board of supervisors of a soil and water conservation district under G.S. 139-6, and the filing fee is five dollars (\$5.00). The election shall be nonpartisan, separate ballots shall be used, no party affiliation shall be indicated on the ballot for any candidate, and the election shall be decided by plurality without runoff. In all other respects, the election shall be conducted

as provided in Chapter 163 of the General Statutes and rules and regulations of the State Board of Elections concerning the conduct of nonpartisan elections simultaneously with a general election."

SECTION 2. This act is effective beginning with the 2008 election.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2421

Session Law 2006-93

AN ACT TO AUTHORIZE THE PIEDMONT TRIAD WATER AUTHORITY TO EMPLOY LAKE WARDENS WITH THE AUTHORITY OF PEACE OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. With respect to its property in Guilford and Randolph Counties, the Piedmont Triad Regional Water Authority may contract for or employ lake wardens to enforce federal and State laws and the ordinances, rules, and regulations of the units of local government where the property is located providing for the protection of the watershed, the protection of game and wildlife in the area, and the protection of parks and recreational areas. Upon taking the oath of office of law enforcement officers set forth in G.S. 11-11, the lake wardens shall have the powers of peace officers, including the power of arrest, for the purpose of enforcing those laws.

SECTION 2. This act applies only to the Piedmont Triad Regional Water Authority and its property in Guilford and Randolph Counties.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

H.B. 2526

Session Law 2006-94

AN ACT TO EXEMPT CLAY COUNTY FROM CERTAIN REQUIREMENTS FOR PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-128, 143-129, and 143-132, Clay County may use the design-build method of construction for an indoor recreational facility that will be located at 365 Anderson Street, Hayesville, North Carolina, a sheriff's office building, and a county administration building. Notwithstanding any provision of law, Clay County may award each contract in its sole discretion.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law on the date it was ratified.

S.B. 1283

Session Law 2006-95

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE AND TO INCREASE THE ADMINISTRATIVE EFFICIENCY OF THE UNIVERSITY OF NORTH CAROLINA BY EXEMPTING IT FROM LAWS GOVERNING CONSULTANT SERVICES, ALLOWING THE BOARD OF GOVERNORS TO DELEGATE MORE AUTHORITY TO THE PRESIDENT OF THE UNIVERSITY OF NORTH CAROLINA, AND CHANGING ITS REPORTING DATES.

The General Assembly of North Carolina enacts:

PART I. FRANCHISE TAX BASE CALCULATION

SECTION 1.1. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus~~ surplus, and undivided ~~profits~~; ~~no reservation or allocation~~ profits. ~~No reservation or allocation from surplus or undivided profits shall be~~ is allowed ~~other than~~ for ~~except~~ as provided below:

- (1) ~~Definite~~ definite and accrued legal ~~liabilities, except as herein provided;~~ liabilities.
- (2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability~~ reserves for the entire cost purposes.
- (3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).
- (4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions

set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

- (5) ~~The Reserves for the~~ cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.
- (6) ~~The Reserves for the~~ cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.
- (7) ~~Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof. The cost of treasury stock.~~
- (8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, ~~surplus~~ surplus, and undivided profits all indebtedness owed to a parent, ~~subsidiary~~ subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. ~~The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary~~ subsidiary, or affiliate, the debtor corporation, which is required under this ~~paragraph~~ subsection to include in

its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the ~~said~~-creditor corporation, may deduct from the debt ~~thus~~-included a proportionate part determined on the basis of the ratio of ~~such~~-the borrowed capital ~~as above specified~~ of the creditor corporation to the total assets of the ~~said~~-creditor corporation. ~~If Further, in case the creditor corporation as above specified is also taxable under the provisions of this section, such the creditor corporation shall be is~~ allowed to deduct from the total of its capital, ~~surplus~~-surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that ~~such the~~ debt has been included in the tax base of ~~said the~~ parent, ~~subsidiary~~-subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

The following definitions apply in this subsection:

- (1) Affiliate. – The same meaning as specified in G.S. 105-130.6.
- (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.
- (3) Parent. – The same meaning as specified in G.S. 105-130.6.
- (4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 1.2. This part becomes effective for taxable years beginning on or after January 1, 2007.

PART II. UNIVERSITY EFFICIENCY MEASURES

SECTION 2.1. G.S. 143-64.24 reads as rewritten:

"§ 143-64.24. Applicability of Article.

This Article shall not apply to the following agencies:

- (1) The General Assembly, special Assembly.
- (2) Special study commissions, the commissions.
- (3) The Research Triangle Institute, or the Institute.
- (4) The Institute of Government, nor shall it apply to attorneys Government.
- (5) Attorneys employed by the North Carolina Department of ~~Justice, or~~ physiciansJustice.
- (6) Physicians or doctors performing contractual services for any State agency. ~~This Article shall not apply to Independent~~
- (7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.
- (8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina."

SECTION 2.2. G.S. 116-11(13) reads as rewritten:

"§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

...

- (13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to the

President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part."

SECTION 2.3. G.S. 116-209.35(f) reads as rewritten:

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

SECTION 2.4. G.S. 116-209.36(g) reads as rewritten:

"(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 2.5. G.S. 116-209.38(f) reads as rewritten:

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

SECTION 2.6. This part is effective when it becomes law.

PART III. EFFECTIVE DATE

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Became law upon approval of the Governor at 8:41 p.m. on the 10th day of July, 2006.

S.B. 1991

Session Law 2006-96

AN ACT TO PROVIDE BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13 AND TO DIVIDE SUPERIOR COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133 is amended by adding a new subsection to read:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for one of those judgeships, and only persons who reside in Brunswick County may be candidates for two of those judgeships. The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeships established for residents of Brunswick County by this subsection shall be the judgeships currently held by Judge Barefoot and Judge Warren, who reside in Brunswick County. Those judges' successors shall be elected for four-year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district."

SECTION 2. 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
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~~ <u>13A</u>	Bladen, ~~Brunswick~~ , Columbus	~~2~~ <u>1</u>
<u>Fourth</u>	<u>13B</u>	<u>Brunswick</u>	<u>1</u>
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	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, 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 3. The superior court judgeship established for District 13A by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Bladen or Columbus County, who shall serve until the expiration of that judge's current term.

SECTION 4. The superior court judgeship established for District 13B by Section 2 of this act shall be filled by the judge currently serving District 13 who resides in Brunswick County, who shall serve until the expiration of that judge's current term.

SECTION 5. Section 5 of this act becomes effective October 1, 2006. Section 1 of this act becomes effective October 1, 2006, or the date upon which Section 1 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later. Sections 2, 3, and 4 of this act become effective October 1, 2006, or the date upon which Section 2 of this act is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

This bill having been presented to the Governor for his signature on the 30th day of June, 2006 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This 11th day of July 2006.

S.B. 1433

Session Law 2006-97

AN ACT TO ALLOW THE TOWN OF OCEAN ISLE BEACH TO MOVE ITS ALCOHOLIC BEVERAGE CONTROL STORE TO A NEW LOCATION WITHIN THE CORPORATE LIMITS OF THE TOWN AND TO MOVE WITHIN SEVEN MILES OF ANOTHER ABC STORE IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of Chapter 372 of the 1991 Session Laws, as amended by Chapter 776 of the 1991 Session Laws, as amended by S.L. 2005-305, the Town of Ocean Isle Beach may close and relocate its current

Alcoholic Beverage Control store to a new location within the corporate limits of the Town of Ocean Isle Beach, and within seven miles of another Alcoholic Beverage Control store in Brunswick County, provided that the Ocean Isle Beach Alcoholic Beverage Control Board complies with the requirements of Chapter 18B of the General Statutes and receives approval from the North Carolina Alcoholic Beverage Control Commission.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law on the date it was ratified.

H.B. 2477

Session Law 2006-98

AN ACT AMENDING THE DURHAM COUNTY ROOM OCCUPANCY TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36 and Section 4.1 of S.L. 2005-233, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~54-64~~ months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~54-month~~64-month period.

If construction on the Performing Arts Theater has not begun within ~~54-64~~ months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~54-month~~64-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~54-64~~ months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~54-64~~ months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law on the date it was ratified.

S.B. 294

Session Law 2006-99

AN ACT AMENDING THE CHARTER OF THE TOWN OF CAJAH MOUNTAIN TO CHANGE THE NAME OF THE BOARD OF ALDERMEN TO TOWN COUNCIL AND THE TITLE OF THE CHAIRMAN TO MAYOR.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1983-52, as amended by Section 35.4 of S.L. 1983-636 and S.L. 1989-19, reads as rewritten:

"Section 1. The Charter for the Town of Cajah Mountain shall be as follows:

"CHAPTER I.

"Incorporation and Corporate Powers.

"Section 1.1. Incorporation. The citizens of the area described in Chapter II of this act shall be and constitute a body politic and corporate under the name of 'Town of Cajah Mountain', and shall have all of the powers, authority, rights, privileges, and immunities conferred upon municipal corporations by the Constitution and general laws of North Carolina.

"Sec. 1.2. Powers. The Town shall have all the powers, duties, rights, privileges and immunities now vested in the Town and now or hereafter granted to municipal corporations by the Constitution, by the general laws of the State of North Carolina, and by this Charter. The Town shall exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, and general welfare of the Town and of its citizens, unless otherwise prohibited in this Charter.

"CHAPTER II.

"Corporate Boundaries.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town are: Beginning at a point in the center of State Road 1169 at its junction with State Road 1276 a line in a Northwest direction 1175 feet to a point in the South shoulder of State Road 1153 at its junction with State Road 1001. From this point following the South shoulder of State Road 1153 in a Southwest direction 2,489 feet to a point in the shoulder of State Road 1153 at its junction with Bishop Drive. From this point, a line in a Southeast direction 1175 feet to a point in the center of Floral Drive at its dead end. From this point a line in a Southwest direction 4,414 feet to a point in the shoulder of State Road 1146 at its junction with the West leg of State Road 1154. From this point a line in a Southeast direction 6,300 feet of a point in the center of State Road 1134 at its junction with the East leg of State Road 1135. From this point a line in a Southwest direction 5,212 feet to a point in the center of State Road 1001, (the Wayne Beane-W. P. Bolick Corner). From this point, a line in a Northeast direction 1,800 feet to a point in the center of State Road 1130, (the E. M. White-Donald Jolly corner). From this point, a line in a Northern direction 9,575 feet to a point in the center of State Road 1156 at its junction with State Road 1159. From this point, a line in a Northwest direction 5,600 feet to the beginning.

"CHAPTER III.

"Governing Body.

"Sec. 3.1. ~~Number of members.~~ Governing body. The governing body shall ~~consist of~~ be a Town Council consisting of five members called ~~aldermen.~~ council members.

"Sec. 3.2. Manner of election of ~~aldermen.~~ council members. The qualified voters of the entire Town of Cajah Mountain shall elect the ~~aldermen.~~ members of the Town Council.

"Sec. 3.3. Term of office of ~~aldermen.~~ council members. Five aldermen are to be elected at the first regular Town election in November of 1983. The three persons who receive the highest number of votes shall serve a four-year term, and the two persons receiving the next highest number of votes shall serve a two-year term. The terms will

continue to be staggered, with ~~ensuing~~subsequent aldermen and council members being elected for four-year terms.

"Sec. 3.4. Mayor. ~~The Town of Cajah Mountain will not elect a mayor, but a chairman will be selected from the Board of Aldermen by the Board of Aldermen, whose duties will be the same as those duties a traditional mayor would perform.~~The members of the Town Council shall elect a mayor from among their membership.

"Sec. 3.5. Recall. Any member of the ~~Board of Aldermen~~Town Council may be removed from office in the following manner:

(1) Any elector of the Town may make and file with the Town Clerk an affidavit containing the name of the ~~alderman~~council member whose removal is sought and a statement of the grounds alleged for his removal. The Clerk shall thereupon deliver to the elector making such affidavit copies of petition blanks for demanding such a removal, printed forms of which he shall keep on hand. Such blanks shall be issued by the Clerk with his signature thereto attached and shall be dated and addressed to the ~~Board of Aldermen~~Town Council, indicate the person to whom issued, and state the name of the officer whose removal is sought. A copy of the petition shall be entered in a record book kept for that purpose in the office of the Clerk. A recall petition to be effective must be returned and filed with the Clerk within 30 days after the filing of the affidavit and to be sufficient must bear the signature of at least thirty-three per centum (33%) of the registered voters of the Town as shown by the registration records for the last preceding general municipal election.

(2) If a recall petition shall be certified by the Clerk to be sufficient he shall at once submit it to the ~~Board of Aldermen~~Town Council with his certificate to that effect and shall notify the officer whose removal is sought of such action. If the officer whose removal is sought does not resign within five days after such notice the ~~Board of Aldermen~~Town Council shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than 70 nor more than 100 days after the petition has been certified to the ~~Board of Aldermen~~Town Council and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the ~~Board of Aldermen~~Town Council shall call a special recall election to be held within the time aforesaid.

(3) The question of recalling any number of officers may be submitted at the same election, but as to each such officer a separate petition shall be filed and there shall be an entirely separate ballot.

(4) The ballots used in a recall election shall submit the following propositions in the order indicated:

☐ For the recall of (name of officer).

☐ Against the recall of (name of officer).

Except that the spaces left for the name and date shall be filled by the correct names and date, the ballots used in a recall election shall be in form substantially as follows:

'RECALL ELECTION

Town of Cajah Mountain

_____(Month and day of month)_____ 1920____

☐ For the recall of _____

☐ Against the recall of _____.'

(5) If a majority of the votes cast on the question of recalling an officer be against his recall he shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the officer

designated on the ballot, he shall, regardless of any defects in the recall petition, be deemed removed from office.

(6) If an officer in regard to whom a sufficient recall petition is submitted to the ~~Board of Aldermen~~Town Council shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this Charter for filling vacancies in such office, except as provided in subdivision (8) of this section. But an officer removed by the voters as the result of a recall election or resigning after a sufficient petition for his recall has been submitted to the ~~Board of Aldermen~~Town Council shall not be reelected to fill the vacancy caused by his own removal or resignation.

(7) No recall petition shall be filed against an officer within three months after he takes office, nor, in case of an officer subjected to a recall election and not removed thereby, until at least six months after that election.

(8) If the recall of a majority of the members of the ~~Board of Commissioners~~Town Council shall be effected at a single recall election, the successors of the officers recalled shall be elected by the registered, qualified voters of the Town at a special municipal election, and said successors shall serve for the unexpired part of the terms of the officers recalled. The members of the ~~Board of Aldermen~~Town Council who have not been recalled are empowered to call said special election and to make all necessary provisions regarding the same in conformity to the Constitution and general laws of North Carolina. If the recall of all of the members of the ~~Board of Aldermen~~Town Council shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

"Sec. 3.6. Pay for ~~aldermen~~council members. The ~~aldermen~~members of the Town Council shall receive no pay.

"CHAPTER IV.

"Elections.

"Sec. 4.1. Conduct of Town elections. The Town officers shall be elected on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Caldwell County Board of Elections."

SECTION 2. The current members of the Board of Alderman shall continue in office as members of the Town Council until the conclusion of their terms of office. The current chairman of the Board of Aldermen shall continue in office as the mayor of the Town until the conclusion of his or her term of office. No action of the Board of Alderman shall be considered unlawful because of the provisions of this act.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law on the date it was ratified.

H.B. 2041

Session Law 2006-100

AN ACT TO ALLOW THE CITY OF FAYETTEVILLE TO USE CIVILIAN TRAFFIC INVESTIGATORS TO INVESTIGATE PROPERTY DAMAGE CRASHES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Fayetteville only.

SECTION 2. Notwithstanding any other provision of law, the City of Fayetteville is hereby authorized to employ and allow civilian personnel to investigate traffic crashes. The civilian personnel shall be known as "Civilian Traffic Investigators".

SECTION 3. The City of Fayetteville shall establish the minimum standards for employment as a Civilian Traffic Investigator.

SECTION 4. Each Civilian Traffic Investigator shall attend a training program designed by Fayetteville Technical Community College, Office of Protective Services Training, in consultation with the North Carolina Justice Academy. Upon completion of the training program, a Civilian Traffic Investigator shall spend not less than four weeks of field training with a law enforcement officer who has experience conducting traffic crash investigations.

SECTION 5. Each Civilian Traffic Investigator shall be issued credentials by the City of Fayetteville identifying the individual as a Civilian Traffic Investigator. The Civilian Traffic Investigator shall produce official credentials at any time when requested by a member of the public involved in or as a witness to a crash. A Civilian Traffic Investigator shall be issued a uniform that is substantially different in color and style from that of a law enforcement officer for the City of Fayetteville. The uniform shall have patches that clearly identify the individual as a Civilian Traffic Investigator. The individual's name shall be clearly displayed on the uniform. Civilian Traffic Investigators shall not be issued badges.

SECTION 6. Any vehicles issued to, or used by, a Civilian Traffic Investigator shall not bear markings or symbols that identify the vehicle as a police vehicle. The vehicle may have emergency equipment and lights installed but shall not use blue lights in any manner or form. Red and amber lights are permissible.

SECTION 7. Civilian Traffic Investigators shall investigate crashes involving only property damage. A Civilian Traffic Investigator shall comply with all provisions of G.S. 20-166.1. A report completed by a Civilian Traffic Investigator shall be treated the same as if it were completed by a law enforcement officer for the purposes of G.S. 20-166.1(i). A law enforcement officer shall investigate any crash involving personal injury or a fatality.

SECTION 8. A Civilian Traffic Investigator shall have no authority to arrest or issue criminal process. A Civilian Traffic Investigator shall not be issued a weapon of any type.

SECTION 9. A Civilian Traffic Investigator shall have the same authority as a law enforcement officer to tow or remove a vehicle that is obstructing a public street or highway.

SECTION 10. Not later than December 31, 2007, the City of Fayetteville shall deliver to the House Appropriations Subcommittee on Justice and Public Safety and the Senate Committee on Appropriations on Justice and Public Safety a written report on the training and use of Civilian Traffic Investigators for the period commencing on the effective date of this act and concluding November 1, 2007.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law on the date it was ratified.

H.B. 2405**Session Law 2006-101**

AN ACT TO EXPAND THE MEMBERSHIP OF THE RUTHERFORD COUNTY BOARD OF EDUCATION BY ADDING AN AT-LARGE MEMBER AND ALLOW THE CHAIRMAN TO VOTE ON ALL ISSUES BEFORE THAT BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 359 of the 1973 Session Laws, as amended by Chapter 1165, Session Laws of 1977 (Session Laws of 1978), and by Chapter 95 of the 1983 Session Laws, reads as rewritten:

"**Sec. 2.** The Rutherford County Board of Education consists of ~~six members who~~ seven members, six of whom shall reside in and represent the districts set out in Section 3 of this act, but who shall be elected by the voters of Rutherford County voting at large, at large, and one at-large member who may reside anywhere within Rutherford County. Members of the Board shall serve terms of four years beginning on the first Monday in December following their election and continuing until their successors are elected and qualified. The at-large member who may reside anywhere in the county shall initially be elected in the 2008 election to serve a four-year term. The three members of the Board who were elected in 1970 pursuant to Chapter 439 of the Session Laws of 1969 shall continue to hold office until the first Monday in December, 1974, and the three members elected in 1972 pursuant to this act shall continue to hold office until the first Monday in December, 1976."

SECTION 2. The expansion of the Rutherford County Board of Education from six to seven members is effective at the organizational meeting after the 2008 election.

SECTION 3. The chairman of the Rutherford County Board of Education may vote on all issues before that board. This section becomes effective at the organizational meeting after the 2008 election.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law on the date it was ratified.

H.B. 2570**Session Law 2006-102**

AN ACT AUTHORIZING THE CITY OF GREENVILLE TO LIMIT THE CLEAR-CUTTING OF TREES IN BUFFER ZONES PRIOR TO DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) A municipality may adopt ordinances to regulate the removal and preservation of existing trees with a diameter at breast height of six inches or greater prior to development within a perimeter buffer zone of up to 50 feet along public roadways and property boundaries adjacent to developed properties and up to 25 feet along property boundaries adjacent to undeveloped properties.

SECTION 1.(b) Ordinances adopted pursuant to this act shall:

- (1) Provide that the requirement of the ordinances apply only to activity occurring on undeveloped property prior to the approval of a site plan,

subdivision plan, or other authorized development plan or permit for the property and that, after approval of a site plan, subdivision plan, or other authorized development plan or permit for the property, the property, including the property within the perimeter buffer zones, may be developed in accordance with applicable regulations governing development of the property.

- (2) Provide that the area of the required perimeter buffer zones shall not exceed twenty percent (20%) of the area of the tract, net of public road rights-of-way, and any required conservation easements.
- (3) Provide that the perimeter buffer zones that adjoin public roadways shall be measured from the edge of the public road right-of-way.
- (4) Provide that tracts of two acres or less are exempt from the requirements of the ordinances.
- (5) Provide that a survey of individual trees is not required.
- (6) Include reasonable provisions for access onto and within the subject property.
- (7) Exclude forestry activities on property that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes and forestry activity that is conducted in accordance with a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for the properties described in this subdivision, a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of the forestry activity if the forestry activity results in the removal of all or substantially all of the trees that were protected under an ordinance adopted pursuant to this act from the tract of land for which the permit or plan approval is sought.
- (8) Provide that a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of the removal of trees from the required perimeter buffer zones if the removal of trees results in the removal of all or substantially all of the trees that were protected under an ordinance adopted pursuant to this act from the tract of land for which the permit or plan approval is sought.

SECTION 2. Before adopting an ordinance authorized by Section 1 of this act, the governing board of the municipality shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. 160A-364.

SECTION 3. Nothing in this act shall be construed to limit or be limited by any other existing laws or ordinances.

SECTION 4. This act applies to the City of Greenville only, and to property located within the City's corporate limits and extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law on the date it was ratified.

H.B. 2724**Session Law 2006-103**

AN ACT AMENDING THE CHARTER OF THE TOWN OF CHAPEL HILL TO PERMIT THE TOWN COUNCIL TO ACCEPT PAYMENTS IN LIEU OF TRANSPORTATION INFRASTRUCTURE IMPROVEMENTS FOR NEW DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter V of the Charter of the Town of Chapel Hill, being Chapter 473 of the 1975 Session Laws, as amended by Chapter 936 of the 1985 Session Laws and Chapter 549 of the 1993 Session Laws, is amended by adding the following new section to read:

"Sec. 5.43. Public Transit System Payments.

(a) The Town may adopt an ordinance to allow an applicant for development to offer, at the applicant's discretion, payments in support of the public transit system in lieu of providing transportation infrastructure improvements in order to satisfy a condition of approval of the proposed development. The ordinance may allow for both the payment of funds and the construction of transportation infrastructure improvements if the Council determines that a combination of payments and construction is in the best interest of the citizens of the area to be served.

(b) The ordinance shall provide for the following standards:

- (1) A traffic impact study demonstrates that the proposed new development in the Town or in the Town's extraterritorial planning jurisdiction is expected to place an increased demand on the transportation infrastructure.
- (2) The payments are calculated to be reasonably equivalent to the cost of the public transit system improvements required to address the impact of the new development.
- (3) The Town uses any payments made under this section to provide either or both of the following:
 - a. Public transit system capital improvements that will improve public transit service to the new development.
 - b. Roads or other transportation infrastructure improvements that will serve the area of the new development.

(c) As used in this section, the term "public transit system capital improvements" includes buses and bus shelters."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law on the date it was ratified.

S.B. 1277**Session Law 2006-104**

AN ACT TO ESTABLISH THE NORTH CAROLINA NEW ORGANIZATIONAL VISION AWARD SPECIAL LICENSURE DESIGNATION, AS RECOMMENDED BY THE STUDY COMMISSION ON AGING.

Whereas, "direct care workers" is a nationally recognized term referring to those paraprofessionals that are employed as nurse aides, personal care aides, personal

care attendants, home health aides, in-home aides, habilitation aides, and other assistive personnel who provide hands-on care; and

Whereas, direct care workers are essential to the provision of care and an enhanced quality of life for long-term care consumers, whether they are receiving services provided in a home or community setting, or in a residential or institutional setting; and

Whereas, North Carolina, like many states, is experiencing shortages of direct care workers; and

Whereas, the need to attract and retain greater numbers of employees within this occupational category will continue for the foreseeable future; and

Whereas, a well-qualified, satisfied, stable, and adequate supply of direct care workers is a shared concern for employers, employees, consumers, families, and private and public payors of long-term care services received in home care agencies, adult care homes, and nursing facilities; and

Whereas, long-term care trade associations, providers, direct care workers, consumer advocacy organizations, researchers, the Department of Health and Human Services, and The Carolinas Center for Medical Excellence have worked together to develop a voluntary and comprehensive workplace culture change program known as the North Carolina New Organizational Vision Award (NC NOVA) to address known causes of direct care turnover for the purpose of improving the adequacy, stability, satisfaction, and quality of the direct care work; and

Whereas, NC NOVA has been identified as a potential national model for replication to improve direct care workforce retention through a comprehensive and voluntary workplace culture program by the Institute for the Future of Aging Services, the program office for the national Better Jobs Better Care initiative funded by the Robert Wood Johnson Foundation, and The Atlantic Philanthropies; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 6. North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation.

"§ 131E-154.12. Title; purpose.

(a) This Part shall be known as the "North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation."

(b) The purpose of this Part is to establish special licensure designation requirements for nursing homes and home care agencies licensed pursuant to this Chapter and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes. Application for the Special Licensure Designation is voluntary.

"§ 131E-154.13. Definitions.

The following definitions apply in this Part, unless otherwise specified:

- (1) Independent Review Organization. – The organization responsible for the application, review, and determination process for NC NOVA designation.
- (2) North Carolina New Organizational Vision Award (NC NOVA). – A special licensure designation for home care agencies and nursing homes licensed pursuant to this Chapter, and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes, that have been determined through written and on-site review by an

independent review organization to have met a comprehensive set of workplace related interventions intended to improve the recruitment and retention, quality, and job satisfaction of direct care staff and the care provided to long-term care clients and residents.

- (3) NC NOVA Partner Team. – The entity responsible for developing the criteria and protocols for the NC NOVA special licensure designation. The Partner Team is inclusive of representatives from the following organizations: Association for Home and Hospice Care of North Carolina, Direct Care Workers Association of North Carolina, Duke University Gerontological Nursing Program, Friends of Residents in Long Term Care, North Carolina Assisted Living Association, North Carolina Association of Long Term Care Facilities, North Carolina Association of Non-Profit Homes for the Aging, North Carolina Department of Health and Human Services, North Carolina Foundation for Advanced Health Programs, North Carolina Health Care Facilities Association, The Carolinas Center for Medical Excellence, and the University of North Carolina at Chapel Hill – Institute on Aging.
- (4) NC NOVA Provider Information Manual. – The document developed by the NC NOVA Partner Team that specifies the scope of criteria for NC NOVA designation as well as information and procedures pertaining to the application, review, determination, and termination process.

"§ 131E-154.14. NC NOVA program established.

(a) The Department of Health and Human Services shall establish the NC NOVA program.

(b) The Department shall adopt rules to implement the NC NOVA program in accordance with the criteria and protocols established by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(c) Any information submitted by applicants or obtained by the independent review organization related to NC NOVA, as well as annual turnover data voluntarily submitted by home care agencies, adult care homes, and nursing facilities for the purposes of assessing statewide turnover trends, shall not be considered a public record under G.S. 132-1.

(d) Any licensed home care agency, adult care home, or nursing home that is determined not to have met the criteria for NC NOVA designation may reapply at intervals specified by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(e) The Department of Health and Human Services, Division of Facility Services, shall issue a NC NOVA special licensure designation document to any licensed home care agency, adult care home, or nursing home that is determined by the independent review organization to have met the criteria for NC NOVA designation. The special licensure designation document shall be in addition to the operating license issued by the Division.

(f) The Division of Facility Services shall issue the NC NOVA special licensure document to successful applicants within 30 days of notification by the independent review organization.

(g) The NC NOVA special licensure designation shall be in effect for a two-year period unless the provider has a change in ownership.

- (1) Upon a change in ownership, if the new owner wishes to continue the NC NOVA designation, the new owner must communicate the desire in writing to the independent review organization within 30 days of the effective date of the change of ownership and proceed with an expedited review in accordance with procedures detailed by the NC NOVA Partner Team and included in the NC NOVA Provider Information Manual.
 - a. If the new owner continues to meet the NC NOVA criteria, based upon the expedited review, the special licensure designation will remain in effect for the remainder of the two-year period.
 - b. If the new owner fails to meet NC NOVA criteria, the special designation document shall be immediately returned to the Division of Facility Services. The new owner may reapply for NC NOVA designation under subsection (e) of this section.
- (2) Within 30 days of the effective date of the change of ownership, if the new owner fails to notify the independent review organization in writing of the desire to retain the special licensure designation by undergoing an expedited review, the designation will become null and void, and the special designation document must be immediately returned to the Division of Facility Services."

SECTION 2.(a) In order to ensure continuity during the initial statewide implementation phase of NC NOVA, The Carolinas Center for Medical Excellence shall be designated as the independent review organization for NC NOVA through December 31, 2010. Beginning in 2009, the Division of Facility Services, with approval from the NC NOVA Partner Team, shall implement a competitive bid process to determine an independent review organization for a minimum of five years beginning in 2011.

SECTION 2.(b) During the period of the effective date of this act, through December 31, 2010, in the event The Carolinas Center for Medical Excellence determines it cannot continue conducting independent reviews, The Carolinas Center for Medical Excellence shall provide the Partner Team with a 12-month written notice of such intent in order to ensure sufficient transition time to select another independent review entity without any disruption of the NC NOVA program.

SECTION 3. This act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:30 a.m. on the 13th day of July, 2006.

S.B. 615

Session Law 2006-105

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS TO THE INSURANCE LAW AND TO AMEND THE INSURANCE HOLDING COMPANY ACT AND A RELATED STATUTE TO STRENGTHEN THE SOLVENCY OF NORTH CAROLINA INCORPORATED INSURERS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS AND CLARIFICATIONS.

SECTION 1.1. G.S. 58-2-150 reads as rewritten:**"§ 58-2-150. Oath required for compliance with law.**

Before issuing a license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with the Commissioner the affidavit of its president or other chief officer that it accepts the terms and obligations of ~~Articles 1 through 67 of this Chapter~~ as a part of the consideration of the license."

SECTION 1.2. G.S. 58-7-1 reads as rewritten:**"§ 58-7-1. Application of ~~Articles 1 through 64 of this Chapter~~ and general laws.**

The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this State shall be governed by ~~Articles 1 through 64 of this Chapter~~, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of ~~Articles 1 through 64 of this Chapter~~ is filed with the Commissioner."

SECTION 1.3. G.S. 58-7-26(a) reads as rewritten:

"(a) An asset or a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution as defined in subsection (c) of this section. This security may be in the form of:

- (1) Cash;
- (2) Securities that are listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subsection (b) of this section, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first; or
- (4) Any other form of security acceptable to the Commissioner."

SECTION 1.4. G.S. 58-30-125 reads as rewritten:**"§ 58-30-125. Notice to creditors and others.**

(a) Unless the Court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

- (1) By first-class mail and either by ~~telecopier, telegram, facsimile,~~ electronic mail, or telephone to the insurance regulator of each jurisdiction in which the insurer is doing business;
- (2) By first-class mail to any domestic or foreign guaranty association that is or may become obligated as a result of the liquidation;
- (3) By first-class mail to all insurance agents of the insurer;
- (4) By first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known addresses indicated by the records of the insurer; and
- (5) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems to be appropriate.

(b) Notice to potential claimants under subsection (a) of this section shall require claimants to file with the liquidator their claims, together with proper proofs thereof under G.S. 58-30-190, on or before a date the liquidator specifies in the notice. ~~The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file claims.~~ All claimants have a duty to keep the liquidator informed of any changes of address. The liquidator need not require the following to file claims under this section:

- (1) Persons claiming cash surrender values or other investment values in life insurance and annuities.
- (2) Persons claiming unearned premiums on property or casualty insurance.

(c) If notice is given in accordance with this section, the distribution of assets of the insurer under this Article shall be conclusive with respect to all claimants, whether or not they receive notice."

SECTION 1.5. G.S. 58-30-180(a) reads as rewritten:

"(a) ~~Within 120 days of~~ one year after a final determination of insolvency of an insurer by the Court, the liquidator shall make application to the Court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to a domestic or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination."

SECTION 1.6. G.S. 58-36-95(c) reads as rewritten:

"(c) It is a violation of G.S. ~~58-2-180~~ 58-3-180 for an automobile repair facility or parts person to place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair part."

SECTION 1.7. G.S. 58-37-35(b)(1) reads as rewritten:

- "(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
 - a. Bodily injury liability: thirty thousand dollars (\$30,000) each person, sixty thousand dollars (\$60,000) each accident;
 - b. Property damage liability: twenty-five thousand dollars (\$25,000) each ~~person;~~ accident;
 - c. Medical payments: one thousand dollars (\$1,000) each person; except that this coverage shall not be available for motorcycles;

- d. Uninsured motorist: thirty thousand dollars (\$30,000) each person; sixty thousand dollars (\$60,000) each accident for bodily injury; twenty-five thousand dollars (\$25,000) each accident property damage (one hundred dollars (\$100.00) deductible);
- e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission."

SECTION 1.8. G.S. 58-50-40(i) reads as rewritten:

"(i) Upon the termination of a group health insurance contract by the insurer, the insurer shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e). Upon the termination of a group health insurance contract by the insurance fiduciary, the insurance fiduciary shall notify every subscriber and certificate holder under the contract of the termination of the contract along with the certification required to be provided under G.S. 58-68-30(e)."

SECTION 1.9. G.S. 58-50-100 reads as rewritten:

"§ 58-50-100. Title and reference.

This section and G.S. 58-50-105 through G.S. ~~58-50-150~~ 58-50-156 are known and may be cited as the North Carolina Small Employer Group Health Coverage Reform Act, referred to in those sections as "this Act".

SECTION 1.10. G.S. 97-7 reads as rewritten:

"§ 97-7. State or subdivision and employees thereof.

Neither the State nor any municipal corporation within the State, nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision, shall have the right to reject the provisions of this Article relative to payment and acceptance of compensation, and ~~the provisions of G.S. 97-100(j) shall~~ G.S. 97-100(c) does not apply to them: Provided, that all such corporations or subdivisions are hereby authorized to self-insure or purchase insurance to secure its liability under this Article and to include thereunder the liability of such subordinate governmental agencies as the county board of health, the school board, and other political and quasi-political subdivisions supported in whole or in part by the municipal corporation or political subdivision of the State. Each municipality is authorized to make appropriations for these purposes and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law."

PART II. SUBSTANTIVE CORRECTIONS AND CLARIFICATIONS.

SECTION 2.1. G.S. 20-45(c) reads as rewritten:

"(c) Any sworn law enforcement officer with jurisdiction is authorized to seize the certificate of title, registration card, permit, license, or registration plate, if the officer has electronic or other notification from the Division that the item has been revoked or cancelled, or otherwise has probable cause to believe that the item has been revoked or cancelled under any law or statute, including G.S. 20-309(e). If a criminal proceeding relating to ~~the item~~ a certificate of title, registration card, permit, or license is pending, the law enforcement officer in possession of that item shall retain the item pending the entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding pending, the law enforcement officer shall deliver the item to the Division."

SECTION 2.2. G.S. 20-45(d) reads as rewritten:

"(d) Any law enforcement officer who seizes a registration plate pursuant to this section shall report the seizure to the Division within 48 hours of the ~~seizure~~seizure and shall return the registration plate, but not a fictitious registration plate, to the Division within 10 business days of the seizure."

SECTION 2.3. G.S. 20-288 reads as rewritten:**"§ 20-288. Application for license; license requirements; expiration of license; bond.**

(a) A new motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler may obtain a license by filing an application with the Division. An application must be on a form provided by the Division and contain the information required by the Division. An application for a license must be accompanied by the required fee and by an application for a dealer license plate.

(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

- (1) The required fee.
- (2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license.
- (3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.
- (4) The application for a dealer license plate.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matters commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall be for a period of one year unless sooner revoked or suspended. The Division shall vary the expiration dates of all licenses that are granted so that an equal number of licenses expire at the end of each month, quarter, or other period consisting of one or more months to coincide with G.S. 20-79(c).

(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of more than 2,500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of more than 2,500 pounds

unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, factory branch, distributor, distributor branch, or wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent of the bond. The amount of the bond for an applicant for a motor vehicle dealer's license is fifty thousand dollars (\$50,000) for one established salesroom of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional established salesrooms. The amount of the bond for other applicants required to furnish a bond is fifty thousand dollars (\$50,000) for one place of business of the applicant and twenty-five thousand dollars (\$25,000) for each of the applicant's additional places of business.

A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle, including a motor vehicle dealer, who shall have suffered any loss or damage by the failure of any license holder subject to this subsection to deliver free and clear title to any vehicle purchased from a license holder or any other act of a license holder subject to this subsection that constitutes a violation of this Article or Article 15 of this Chapter shall have the right to institute an action to recover against the license holder and the surety. Every license holder against whom an action is instituted shall notify the Commissioner of the action within 10 days after served with process. Except as provided by G.S. 20-288(f) and (g), a corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the bonded person stops engaging in business or the person's license is denied, suspended, or revoked under G.S. 20-294. That cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. This subsection does not apply to a license holder who deals only in trailers having an empty weight of 4,000 pounds or less. This subsection does not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12.

(f) A corporate surety bond furnished pursuant to this section or renewal thereof may also be canceled by the surety prior to the next premium anniversary date without the prior written consent of the license holder for the following reasons:

- (1) Nonpayment of premium in accordance with the terms for issuance of the surety bond; or
- (2) An act or omission by the license holder or his representative that constitutes substantial and material misrepresentation or nondisclosure of a material fact in obtaining the surety bond or renewing the bond.

Any cancellation permitted by this subsection is not effective unless written notice of cancellation has been delivered or mailed to the license holder and to the Commissioner

not less than 30 days before the proposed effective date of cancellation. The notice must be given or mailed by certified mail to the license holder at its last known address. The notice must state the reason for cancellation. Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation. Cancellation of the surety shall not affect any liability incurred or accrued prior to the termination of the 30-day notice period.

(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. Cancellation of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond."

SECTION 2.4. G.S. 58-2-240 reads as rewritten:

"§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial statement analysis ~~documents, ratios, programs, findings, and other information in the custody of the Department~~ work papers are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner, however, may use ~~these documents, materials, findings, or other information~~ market analysis, documents arising from market conduct action, and financial statement analysis work papers in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(b) As used in this Article:

- (1) "Market analysis" means work product arising from a process whereby ~~individuals—persons~~ employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (2) "Market conduct action" means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with an insurer; insurer ~~interviews,~~ interviews; information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this section.

- (3) "Financial statement analysis" means a set of systems and procedures designed to provide relevant information derived from basic sources of data for the purpose of evaluating the risk of an insurer's insolvency.
- (4) "Financial statement analysis work papers" means:
 - a. Documents, programs, findings, and other information produced by persons employed or contracted by the Commissioner during and as part of the financial statement analysis of an insurer.
 - b. Documents, programs, findings, and other information disclosed by an entity to persons employed or contracted by the Commissioner in response to an inquiry from the Commissioner during and as part of the financial statement analysis of the insurer.
 - c. Documents, programs, findings, and other information obtained, during and as part of the financial statement analysis of an insurer, by persons employed or contracted by the Commissioner from or through any regulatory or law enforcement agency or the NAIC when the receipt of that information is conditioned upon the Commissioner maintaining the confidentiality of the information shared with the Commissioner.

"Financial statement analysis work papers" includes financial analysis programs and procedures; correspondence between persons employed or contracted by the Commissioner and the insurer during and as part of the financial statement analysis; memos, e-mails, and other correspondence, in any form, produced by persons employed or contracted by the Commissioner detailing findings or recommendations of the financial statement analysis; and the Actuarial Opinion Summary filed by an insurer as required by and in accordance with NAIC Annual Statement Instructions. "Financial statement analysis work papers" does not mean statements filed with the Commissioner under G.S. 58-2-165, CPA audit reports filed with the Commissioner under G.S. 58-2-205, or documents that constitute an initial filing and any supplemental filing necessary to complete a filing made by an insurer, independent of financial statement analysis.

(c) For purposes of subdivisions (b)(3) and (b)(4) of this section only, the term "insurer" has the same meaning as in G.S. 58-30-10(14) and includes a:

- (1) Reciprocal that is or should be licensed under Article 15 of this Chapter.
- (2) Local government risk pool that chooses to operate under Article 23 of this Chapter.
- (3) Fraternal benefit society that is or should be licensed under Article 24 of this Chapter.
- (4) Professional employer organization that is or should be licensed under Article 89A of this Chapter.

(d) Nothing in this section limits public access to financial or actuarial information or calculations filed by an insurer or other entity for rating purposes, including rate filings, deviation filings, and loss cost filings."

SECTION 2.5. Article 2 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-2-245. Access to employer taxpayer identification numbers contained in public documents.

Notwithstanding G.S. 132-1.10(b)(5), the Department is not required to redact an employer taxpayer identification number on documents that may be made available to the general public."

SECTION 2.6. G.S. 58-21-35 reads as rewritten:

"§ 58-21-35. Duty to file reports and retain affidavits. reports.

(a) Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall file with the Commissioner a report in a format prescribed by the Commissioner regarding the insurance and including the following information:

- (1) The name of the insured.
- (2) The identity of the insurer or insurers.
- (3) A description of the subject and location of the risk.
- (4) The amount of premium charged for the insurance.
- (5) The amount of premium tax for the insurance.
- (6) The policy period.
- (7) The policy number.
- (7a) An acknowledged statement that the surplus lines licensee has complied with G.S. 58-21-15.
- (8) The name, address, telephone number, facsimile telephone number, and electronic mail address of the licensee, as applicable.
- (9) Any other relevant information the Commissioner may reasonably require.

(b) The licensee shall complete and retain ~~an affidavit as to the efforts to place the coverage with admitted insurers and the results of the efforts, in accordance with G.S. 58-21-15.~~ a copy of the report in paper or electronic form as required by the Commissioner. The report ~~and affidavit~~ required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

SECTION 2.7. G.S. 58-21-45(f) reads as rewritten:

"(f) Every evidence of insurance negotiated, placed, or procured under the provisions of this Article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in ~~40~~ 12 point type and in contrasting ~~color.~~ color or in 12 point type and underlined and in bold print: 'The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund.' "

SECTION 2.8. G.S. 58-33-95 reads as rewritten:

"§ 58-33-95. Agents personally liable; representing unlicensed company prohibited; penalty.

(a) Any person or entity who solicits, negotiates, or sells insurance or acts as a third-party administrator in this State for an unauthorized insurer:

- (1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract sold, directly or indirectly, by or through that person or entity on behalf of the unauthorized insurer.

- (2) Shall be guilty of a Class 1 misdemeanor if the person or entity does not know that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.
- (3) Shall be guilty of a Class H felony if the person or entity knew or should have known that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

(b) A civil action may be filed or a license revocation proceeding may be initiated under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action or revocation proceeding.

(c) ~~As used in this section, the terms "negotiate", "sell", and "solicit" shall have the meanings set forth in G.S. 58-33-10. As used in~~ For the purposes of this section, the status of an entity or person as an "unauthorized insurer" shall be determined in accordance with Article 28 of this Chapter and, if applicable, Article 49 of this Chapter.

(d) As used in this section, "third-party administrator" means a person who performs administrative functions, including claims administration and payment, marketing, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to any kind of insurance; but does not include the persons specified in G.S. 58-56-2(5)a. through (5)l."

SECTION 2.9. G.S. 58-58-145 reads as rewritten:

"§ 58-58-145. Group annuity contracts defined; requirements; issuance of individual certificates.

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which the contract is issued, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of the contract either wholly from the employer's funds or funds contributed by the employer, or partly from the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

- (1) Identifies the annuity to which the annuitant is entitled.
- (2) States the name of the person to whom the annuity is payable.
- (3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section.

(d) This section does not apply to annuities used to fund:

- (1) An employee pension plan that is covered by the Employee Retirement Income Security Act of 1974 (ERISA);
- (2) A plan described in sections 401(a), 401(k), 403(b), or 457 of the Internal Revenue Code, where the plan, as defined in ERISA, is established or maintained by an employer;
- (3) A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code; or
- (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor."

PART III. HOLDING COMPANY ACT AND RELATED AMENDMENTS.

SECTION 3.1. G.S. 58-7-130(b) reads as rewritten:

~~"(b) No domestic stock insurance company shall declare or pay dividends to its stockholders except from the unassigned surplus of the company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165. A domestic stock insurance company shall not declare or pay dividends or other distributions to its stockholders from any source other than unassigned surplus without the Commissioner's prior written approval. For purposes of this section, "unassigned surplus" means an amount equal to the unassigned funds of a company as reflected in the company's most recent financial statement filed with the Commissioner under G.S. 58-2-165, including all or part of the surplus arising from unrealized capital gains or revaluation of assets."~~

SECTION 3.2. G.S. 58-19-25(d) reads as rewritten:

~~"(d) Subject to G.S. 58-7-130(b) and G.S. 58-19-30(c), each domestic insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 five business days following the declaration thereof. thereof and at least 30 days before the payment thereof. The Commissioner may prescribe the form to be used to report that information. adopt rules to further the requirements of this section."~~

SECTION 3.3. G.S. 58-19-30(c) reads as rewritten:

"(c) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the Commissioner has received notice of the declaration thereof and has not within that period disapproved the payment or (ii) the Commissioner has approved the payment within the 30-day period.

For the purposes of this section, an "extraordinary dividend" or "extraordinary distribution" includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the ~~lesser-greater~~ of (i) ten percent (10%) of the insurer's surplus as regards policyholders as of the preceding December 31, or (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period

ending the preceding December 31; but does not include pro rata distributions of any class of the insurer's own securities. ~~In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carryforward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.~~

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the Commissioner's approval, and the declaration shall confer no rights upon shareholders until (i) the Commissioner has approved the payment of the dividend or distribution or (ii) the Commissioner has not disapproved the payment within the 30-day period referred to above."

SECTION 3.4. G.S. 58-19-30(d) reads as rewritten:

"(d) For the purposes of this Article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, all of the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- (2) The extent to which the insurer's business is diversified among the several kinds of insurance.
- (3) The number and size of risks insured in each kind of insurance.
- (4) The extent of the geographic dispersion of the insurer's insured risks.
- (5) The nature and extent of the insurer's reinsurance program.
- (6) The quality, diversification, and liquidity of the insurer's investment portfolio.
- (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.
- (8) The surplus as regards policyholders maintained by other comparable insurers.
- (9) The adequacy of the insurer's reserves.
- (10) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.
- (11) The quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items."

PART IV. SEVERABILITY.

SECTION 4. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

PART V. EFFECT OF HEADINGS.

SECTION 5. The headings to the parts 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.

PART VI. EFFECTIVE DATES.

SECTION 6. Section 2.3 becomes effective October 1, 2006. Sections 3.1, 3.2, 3.3, and 3.4 become effective December 31, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:31 a.m. on the 13th day of July, 2006.

S.B. 1451**Session Law 2006-106**

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT, TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY, TO REQUIRE A TAX COLLECTOR TO TAKE REASONABLE ADDITIONAL STEPS TO NOTIFY A PROPERTY OWNER OF A TAX SALE UNLESS THE TAX COLLECTOR HAS AFFIRMATIVE KNOWLEDGE THAT THE MAILED NOTICE REACHED THE RECIPIENT, TO AMEND THE DEFINITION OF INVENTORIES TO INCLUDE DISPLAY MODULAR HOMES, AND TO STUDY THE VALUATION OF PROPERTY AT ITS PRESENT-USE VALUE FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"§ 105-273. Definitions.

When used in this Subchapter (unless the context requires a different meaning):

...

- (17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date."

SECTION 2. G.S. 105-369 reads as rewritten:

"§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to the~~ record owner of each affected parcel of property, as determined as of ~~December 31~~

~~of the fiscal year for which the taxes are due.~~ the date the taxes became delinquent. The notice must be sent to ~~each~~ the owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names~~ name of the ~~listing owner~~ and the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct ~~listing owner~~ or record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. – A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

- (1) ~~In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.~~
- (1a) ~~In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.~~ The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order.
- (1b) After the information required by subdivision (1) ~~or (1a)~~ of this subsection for each parcel, a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.
- (2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.
- (3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. – Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. – At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. – No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. – Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

SECTION 3. G.S. 105-374(c) reads as rewritten:

"(c) Parties; Summonses. – The listing-taxpayerowner of record as of the date the taxes became delinquent and spouse (if any), the current owner, any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the listing-taxpayerowner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action."

SECTION 4. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayerlisting real property on which the taxes are a lien, as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

SECTION 5. G.S. 105-375(c) reads as rewritten:

"(c) Notice ~~Listing to~~ Taxpayer and Others. –

- (1) Notice required. – The tax collector filing the certificate provided for in subsection ~~(b), above,~~(b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure a registered or certified letter, return receipt requested, to the listing taxpayer at his taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the listing taxpayer or against any subsequent owner of the property (including any liens referred to in the conveyance of the property to the taxpayer).listing taxpayer or to the subsequent owner of the property), stating that the judgment will be docketed and the execution will be issued thereon in the manner provided by law. A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence.
- (2) Contents of notice. – All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.
- (3) Service of notice. – The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.
- (4) Additional efforts may be required. – If within 10 days following the mailing of said letters of the notice, a return receipt has not been received by the tax collector indicating receipt of the ~~letter,~~ notice, then the tax collector shall ~~have~~ do both of the following:
 - a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.
 - b. Have a notice published in a newspaper of general circulation in said the county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the listing taxpayer that a judgment will be docketed against the listing taxpayer. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered.

- (5) Costs of notice added to lien. – All costs of mailing and publication, plus a charge of fifty dollars (\$50.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

SECTION 6. G.S. 105-375(i) reads as rewritten:

"(i) Issuance of Execution. – At any time after three months and before two years from the indexing of the judgment as provided in subsection (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

- (1) No debtor's exemption shall be allowed.
- (2) In lieu of personal service of notice on the ~~owner of the property, taxpayer~~, the sheriff shall send notice by registered or certified mail mail, return receipt requested, notice shall be mailed to the listing owner-taxpayer at the listing owner's-taxpayer's last known address at least 30 days prior to the day fixed for the sale. The notice must also be mailed to the current owner by registered or certified mail if notice was required to be mailed to the current owner pursuant to subsection (c) of this section. If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.
- (3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.
- (4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the ~~listing~~ taxpayer specified in connection with each.

The purchaser at the execution sale shall acquire title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the judgment."

SECTION 7. Chapter 39 of the General Statutes is amended by adding the following new Article to read:

"Article 10.

"Real Property Tax Proration.

"§ 39-60. Property tax proration on sale of real property.

Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis."

SECTION 8. G.S. 105-273(8a) reads as rewritten:

"(8a) "Inventories" means (i) goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and contractors, and (ii) goods held by contractors to be furnished in the course of building, installing, repairing, or improving real property. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes a modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold."

SECTION 9. The Revenue Laws Study Committee shall study and recommend any changes to the special class of property taxed on the basis of the value of the property at its present use. The study shall include an evaluation of the following:

- (1) Expanding the present-use value system to include wildlife land and other conservation land.
- (2) Adding more specific land resource management criteria to the sound management programs required for lands enrolled in the present-use value system.

The Committee shall make a report of its findings and recommendations to the 2007 General Assembly.

SECTION 10. Section 7 of this act becomes effective for contracts entered into on or after October 1, 2006. Section 9 of this act is effective when it becomes law. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:32 a.m. on the 13th day of July, 2006.

S.B. 1378

Session Law 2006-107

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31A-3 reads as rewritten:

"§ 31A-3. Definitions.

As used in this Article, unless the context otherwise requires, the term –

- (1) "Decedent" means the person whose life is taken by the slayer as defined in subdivision (3). (3) of this section.
- (2) "Property" means any real or personal property and any right or interest therein.
- (3) "Slayer" means any of the following:
 - a. ~~Any A person who~~ who, by a court of competent ~~jurisdiction~~ jurisdiction, ~~shall have been~~ is convicted as a principal or accessory before the fact of the willful and unlawful killing of another ~~person; or person.~~
 - b. ~~Any A person who shall have~~ has entered a plea of guilty in open court as a principal or accessory before the fact of the willful and unlawful killing of another ~~person; or person.~~
 - c. ~~Any A person who~~, upon indictment or information as a principal or accessory before the fact of the willful and unlawful killing of another person, ~~shall have~~ has tendered a plea of nolo contendere which was accepted by the court and judgment entered ~~thereon; or thereon.~~
 - d. ~~Any person who shall have been found in a civil action or proceeding brought within one year after the death of the decedent to have willfully and unlawfully killed the decedent or procured his killing, and who shall have died or committed suicide before having been tried for the offense and before the settlement of the estate. A person who is found by a preponderance of the evidence in a civil action brought within two years after the death of the decedent to have willfully and unlawfully killed the decedent or procured the killing of the decedent. If a criminal proceeding is brought against the person to establish the person's guilt as a principal or accessory before the fact of the willful and unlawful killing of the decedent within two years after the death of the decedent, the civil action may be brought within 90 days after a final determination is made by a court of competent jurisdiction in that criminal proceeding or within the original two years after the death of the decedent, whichever is later. The burden of proof in the civil action is on the party seeking to establish that the killing was willful and unlawful for the purposes of this Article.~~
 - e. A juvenile who is adjudicated delinquent by reason of committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

The term "slayer" does not include a person who is found not guilty by reason of insanity of being a principal or accessory before the fact of the willful and unlawful killing of another person."

SECTION 2. Article 3 of Chapter 31A of the General Statutes is amended by adding a new section to read:

"§ 31A-12.1. Remedies to be exclusive.

This Article wholly supplants the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to any property passing by reason of the death of the decedent."

SECTION 3. This act is effective when it becomes law and applies to property passing from decedents dying on or after that date.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:40 a.m. on the 13th day of July, 2006.

S.B. 1278**Session Law 2006-108**

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ENSURE AWARENESS OF ADULT DAY HEALTH SERVICES AND TO PROVIDE A STATUS REPORT ON CHANGES IMPLEMENTED AS A RESULT OF THE ADULT DAY SERVICES STUDY, AS RECOMMENDED BY THE STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Department of Health and Human Services, Division of Aging and Adult Services and the Division of Medical Assistance, shall provide education, and training if necessary, to ensure that Community Alternatives Program (CAP) case managers are aware of adult day health services and that this option is being considered in all situations appropriate for the client.

SECTION 1.(b) The Department of Health and Human Services, Division of Aging and Adult Services, shall report on the status of the Partners in Caregiving Study recommendations.

SECTION 1.(c) The Department shall report the status of its activities under this section to the North Carolina Study Commission on Aging not later than July 30, 2006.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:55 a.m. on the 13th day of July, 2006.

S.B. 1276**Session Law 2006-109**

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REVIEW THE CAP/DA PROGRAM IN RESPONSE TO ISSUES IDENTIFIED IN THE MEDICAID INSTITUTIONAL BIAS STUDY, AS RECOMMENDED BY THE STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services shall examine the Community Alternatives Program for Disabled Adults (CAP/DA) in response to issues identified in the Medicaid Institutional Bias Study. The Department shall make an interim report of its findings to the North Carolina Study Commission on Aging on

or before August 30, 2006, and shall submit its final report to the North Carolina Study Commission on Aging on or before August 30, 2007. The report shall include actions taken and planned by the Department in response to each bias identified in the study and shall include the following information:

- (1) Information on the utilization of CAP/DA slots, including a history of slots used per year over the last 10 years and the anticipated need during the next 10 years.
- (2) A description of the CAP/DA slot allocation formula; and a breakdown of slots by county, including the reallocation of any unused slots.
- (3) Strategies to ensure that the CAP/DA waiting list is managed as efficiently as possible, including consideration of whether there should be an expiration date tied to unused slots so that they may be reallocated in a timely manner to areas with waiting lists.
- (4) Implementation of a uniform screening/assessment tool and other strategies to ensure maximum operation efficiency and effectiveness for those individuals qualifying for CAP/DA services. This should include information on whether the lists should be prioritized by risk of institutionalization.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:56 a.m. on the 13th day of July, 2006.

S.B. 1279

Session Law 2006-110

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO COLLABORATE WITH PROVIDERS AND ADVOCATES OF HOME AND COMMUNITY-BASED SERVICES TO REVIEW AND MAKE RECOMMENDATIONS ADDRESSING BIASES IDENTIFIED IN THE NORTH CAROLINA INSTITUTIONAL BIAS STUDY REPORT, AS RECOMMENDED BY THE STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services shall collaborate with providers and advocates of home and community-based long-term care services to review the North Carolina Institutional Bias Study Report prepared by the Lewin Group and make recommendations on ways to address the biases identified in the report. The Department shall report its findings and recommendations to the North Carolina Study Commission on Aging on or before October 15, 2006.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:56 a.m. on the 13th day of July, 2006.

S.B. 1857

Session Law 2006-111

AN ACT TO AMEND THE LAW GRANTING STATE RECOGNITION TO THE HALIWA-SAPONI TRIBE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 71A-5 reads as rewritten:

"§ 71A-5. ~~Haliwa-Saponi~~ **Haliwa-Saponi Indian Tribe of North Carolina; rights, privileges, immunities, obligations and duties.**

The Indians now residing in Halifax, Warren and adjoining counties of North Carolina, originally found by the first permanent white settlers on the Roanoke River in Halifax and Warren Counties, and ~~claiming descent from certain~~ who descend from the Saponi, Nansemond, and other tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 15, 1965, be designated and officially recognized as the Haliwa-Saponi Tribe of North Carolina, Haliwa-Saponi Indian Tribe, and they shall continue to enjoy all their rights, privileges and immunities as citizens of the State as now or hereafter provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law. an American Indian Tribe with a recognized tribal governing body carrying out and exercising substantial governmental duties and powers similar to the State, being recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:56 a.m. on the 13th day of July, 2006.

S.B. 1555

Session Law 2006-112

AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM WAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SUBPART A. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE.

SECTION 1. Article 1 of Chapter 25 of the General Statutes is rewritten to read:

"Article 1.

"General Provisions.

"PART 1.

"GENERAL PROVISIONS.

"§ 25-1-101. **Short titles.**

(a) This Chapter may be cited as the Uniform Commercial Code.

(b) This Article may be cited as Uniform Commercial Code – General Provisions.

"§ 25-1-102. **Scope of Article.**

Except as provided in G.S. 25-1-301, this Article applies to a transaction to the extent that it is governed by another Article of this Chapter.

"§ 25-1-103. **Construction of this Chapter to promote its purposes and policies; applicability of supplemental principles of law.**

(a) This Chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this Chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

"§ 25-1-104. **Construction against implied repeal.**

This Chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

"§ 25-1-105. **Severability.**

If any provision or clause of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

"§ 25-1-106. **Use of singular and plural; gender.**

In this Chapter, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

"§ 25-1-107. **Section captions.**

Section captions are part of this Chapter. The subsection headings in Article 9 of this Chapter are not parts of this Chapter.

"§ 25-1-108. **Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., except that nothing in this Article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

"PART 2.

"GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

"§ 25-1-201. **General definitions.**

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of this Chapter that apply to particular Articles or Parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this Chapter that apply to particular Articles or Parts thereof:

- (1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.
- (2) "Aggrieved party" means a party entitled to pursue a remedy.
- (3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in G.S. 25-1-303.
- (4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
- (5) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.
- (6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
- (7) "Branch" includes a separately incorporated foreign branch of a bank.
- (8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
- (9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this Chapter may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate

ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

- a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
- (11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.
 - (12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this Chapter as supplemented by any other applicable laws.
 - (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.
 - (14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
 - (15) "Delivery," with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.
 - (16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.
 - (17) "Fault" means a default, breach, or wrongful act or omission.
 - (18) "Fungible goods" means:
 - a. Goods of which any unit, by nature or usage of trade, are the equivalent of any other like unit; or
 - b. Goods that by agreement are treated as equivalent.
 - (19) "Genuine" means free of forgery or counterfeiting.
 - (20) "Good faith," except as otherwise provided in Article 5 of this Chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
 - (21) "Holder" means:
 - a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
 - b. The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

- (22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
- (23) "Insolvent" means:
 - a. Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
 - b. Being unable to pay debts as they become due; or
 - c. Being insolvent within the meaning of federal bankruptcy law.
- (24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
- (25) "Organization" means a person other than an individual.
- (26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this Chapter.
- (27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (30) "Purchaser" means a person that takes by purchase.
- (31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- (34) "Right" includes remedy.
- (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this Chapter. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401, but a buyer may also acquire a "security interest" by complying with Article 9 of this Chapter. Except as otherwise provided in G.S. 25-2-505, the right of a seller or lessor of goods under

Article 2 or 2A of this Chapter to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this Chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under G.S. 25-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to G.S. 25-1-203.

- (36) "Send" in connection with a writing, record, or notice means:
 - a. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
 - b. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- (37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.
- (38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (39) "Surety" includes a guarantor or other secondary obligor.
- (40) "Term" means a portion of an agreement that relates to a particular matter.
- (41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.
- (42) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.
- (43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

"§ 25-1-202. Notice; knowledge.

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

- (1) It comes to that person's attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

"§ 25-1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

- (1) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
- (4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

- (1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (2) The lessee assumes risk of loss of the goods;
- (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) The lessee has an option to renew the lease or to become the owner of the goods;
- (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

- (6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
- (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
 - (1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
 - (2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.
- (e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

"§ 25-1-204. Value.

Except as otherwise provided in Articles 3, 4, and 5 of this Chapter, a person gives value for rights if the person acquires them:

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.

"§ 25-1-205. Reasonable time; seasonableness.

(a) Whether a time for taking an action required by this Chapter is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

"§ 25-1-206. Presumptions.

Whenever this Chapter creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

"PART 3.

"TERRITORIAL APPLICABILITY AND GENERAL RULES.

"§ 25-1-301. Territorial applicability; parties' power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this Chapter applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) G.S. 25-2-402;
- (2) G.S. 25-2A-105 and G.S. 25-2A-106;
- (3) G.S. 25-4-102;
- (4) G.S. 25-4A-507;
- (5) G.S. 25-5-116;
- (6) G.S. 25-8-110;
- (7) G.S. 25-9-301 through G.S. 25-9-307.

"§ 25-1-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in this Chapter, the effect of provisions of this Chapter may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this Chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this Chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this Chapter of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

"§ 25-1-303. Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (1) Express terms prevail over course of performance, course of dealing, and usage of trade;

- (2) Course of performance prevails over course of dealing and usage of trade; and
- (3) Course of dealing prevails over usage of trade.

(f) Subject to G.S. 25-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

"§ 25-1-304. Obligation of good faith.

Every contract or duty within this Chapter imposes an obligation of good faith in its performance and enforcement.

"§ 25-1-305. Remedies to be liberally administered.

(a) The remedies provided by this Chapter shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in this Chapter or by other rule of law.

(b) Any right or obligation declared by this Chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

"§ 25-1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

"§ 25-1-307. Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

"§ 25-1-308. Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

"§ 25-1-309. Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

"§ 25-1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor."

**SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF
THE UNIFORM COMMERCIAL CODE.**

SECTION 2. G.S. 25-2-103(1) reads as rewritten:

- "(1) In this article unless the context otherwise requires
- (a) "Buyer" means a person who buys or contracts to buy goods.
 - (b) ~~"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.~~
 - (c) "Receipt" of goods means taking physical possession of them.
 - (d) "Seller" means a person who sells or contracts to sell goods. Any manufacturer of self-propelled motor vehicles, as defined in G.S. 20-4.01, is also a "seller" with respect to buyers of its product to whom it makes an express warranty, notwithstanding any lack of privity between them, for purposes of all rights and remedies available to buyers under this Article."

SECTION 3. G.S. 25-2-202 reads as rewritten:**"§ 25-2-202. Final written expression; parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

- (a) by course of performance, ~~course of dealing-dealing~~, or usage of trade (G.S. 25-1-205) ~~or by course of performance (G.S. 25-2-208); (G.S. 25-1-303);~~ and
- (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

SECTION 4. G.S. 25-2-208 is repealed.**SECTION 5.** G.S. 25-2A-103(3) reads as rewritten:

- "(3) The following definitions in other Articles apply to this Article:

~~"Account". G.S. 25-9-102(a)(2).~~
~~"Between merchants". G.S. 25-2-104(3).~~
~~"Buyer". G.S. 25-2-103(1)(a).~~
~~"Chattel paper". G.S. 25-9-102(a)(11).~~
~~"Consumer goods". G.S. 25-9-102(a)(23).~~
~~"Document". G.S. 25-9-102(a)(30).~~
~~"Entrusting". G.S. 25-2-403(3).~~
~~"General intangible". G.S. 25-9-102(a)(42).~~
~~"Good faith". G.S. 25-2-103(1)(b).~~
~~"Instrument". G.S. 25-9-102(a)(47).~~
~~"Merchant". G.S. 25-2-104(1).~~
~~"Mortgage". G.S. 25-9-102(a)(55).~~
~~"Pursuant to commitment". G.S. 25-9-102(a)(68).~~
~~"Receipt". G.S. 25-2-103(1)(c).~~
~~"Sale". G.S. 25-2-106(1).~~
~~"Sale on approval". G.S. 25-2-326.~~
~~"Sale or return". G.S. 25-2-326.~~
~~"Seller". G.S. 25-2-103(1)(d).~~
"Account" G.S. 25-9-102(a)(2).
"Between merchants" G.S. 25-2-104(3).

"Buyer"	<u>G.S. 25-2-103(1)(a).</u>
"Chattel paper"	<u>G.S. 25-9-102(a)(11).</u>
"Consumer goods"	<u>G.S. 25-9-102(a)(23).</u>
"Document"	<u>G.S. 25-9-102(a)(30).</u>
"Entrusting"	<u>G.S. 25-2-403(3).</u>
"General intangible"	<u>G.S. 25-9-102(a)(42).</u>
"Instrument"	<u>G.S. 25-9-102(a)(47).</u>
"Merchant"	<u>G.S. 25-2-104(1).</u>
"Mortgage"	<u>G.S. 25-9-102(a)(55).</u>
"Pursuant to commitment"	<u>G.S. 25-9-102(a)(68).</u>
"Receipt"	<u>G.S. 25-2-103(1)(c).</u>
"Sale"	<u>G.S. 25-2-106(1).</u>
"Sale on approval"	<u>G.S. 25-2-326.</u>
"Sale or return"	<u>G.S. 25-2-326.</u>
"Seller"	<u>G.S. 25-2-103(1)(d).</u> "

SECTION 6. G.S. 25-2A-207 is repealed.

SECTION 7. G.S. 25-2A-501(4) reads as rewritten:

"(4) Except as otherwise provided in ~~G.S. 25-1-106(1)~~ G.S. 25-1-305(a) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative."

SECTION 8. G.S. 25-2A-518(2) reads as rewritten:

"(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 9. G.S. 25-2A-519(1) reads as rewritten:

"(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under G.S. 25-2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 10. G.S. 25-2A-527(2) reads as rewritten:

"(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if the disposition is by

lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under G.S. 25-2A-530, less expenses saved in consequence of the lessee's default."

SECTION 11. G.S. 25-2A-528(1) reads as rewritten:

"(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under G.S. 25-2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a), or if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under ~~2A-530~~, G.S. 25-2A-530, less expenses saved in consequence of the lessee's default."

SECTION 12. G.S. 25-3-103(a)(4) is repealed.

SECTION 13. G.S. 25-3-103(a)(10) reads as rewritten:

"(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (~~G.S. 25-1-201(8)~~). (G.S. 25-1-201(b)(8))."

SECTION 14. G.S. 25-4-104(c) reads as rewritten:

"(c) The following definitions in other Articles apply to this Article:

"Acceptance"	G.S. 25-3-409.
"Alteration"	G.S. 25-3-407.
"Cashier's check"	G.S. 25-3-104.
"Certificate of deposit"	G.S. 25-3-104.
"Certified check"	G.S. 25-3-409.
"Check"	G.S. 25-3-104.
" ~~Good faith~~ "	~~G.S. 25-3-103.~~
"Draft"	G.S. 25-3-104.
"Holder in due course"	G.S. 25-3-302.
"Instrument"	G.S. 25-3-104.
"Notice of dishonor"	G.S. 25-3-503.
"Order"	G.S. 25-3-103.
"Ordinary care"	G.S. 25-3-103.
"Person entitled to enforce"	G.S. 25-3-301.
"Presentment"	G.S. 25-3-501.
"Promise"	G.S. 25-3-103.

"Prove" G.S. 25-3-103.
 "Teller's check" G.S. 25-3-104.
 "Unauthorized signature" G.S. 25-3-403."

SECTION 15. G.S. 25-4A-105(a)(6) is repealed.

SECTION 16. G.S. 25-4A-105(a)(7) reads as rewritten:

"(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (~~G.S. 25-1-201(8)~~). (G.S. 25-1-201(b)(8))."

SECTION 17. G.S. 25-4A-106(a) reads as rewritten:

"(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~G.S. 25-1-201(27)~~. G.S. 25-1-202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day."

SECTION 18. G.S. 25-4A-204(b) reads as rewritten:

"(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in ~~G.S. 25-1-204(1)~~, G.S. 25-1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement."

SECTION 19. G.S. 25-5-103(c) reads as rewritten:

"(c) With the exception of this subsection, subsections (a) and (d) of this section, G.S. 25-5-102(a)(9) and (10), 25-5-106(d), and 25-5-114(d), and except to the extent prohibited in ~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-5-117(d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article."

SECTION 20. G.S. 25-8-102(a)(10) is repealed.

SECTION 21. G.S. 25-9-102(a)(43) is repealed.

SUBPART C. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

SECTION 22. G.S. 66-181 reads as rewritten:

"§ 66-181. Usage of trade.

The terms "utility" and "industrial," when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with ~~G.S. 25-1-205(2)~~ G.S. 25-1-303(c)."

SECTION 23. G.S. 66-313(b) reads as rewritten:

"(b) This Article does not apply to a transaction to the extent it is governed by:

- (1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

- (2) Chapter 25 of the General Statutes other than ~~G.S. 25-1-107~~ G.S. 25-1-306, and ~~G.S. 25-1-206~~, Article 2, and Article 2A.
- (3) Article 11A of Chapter 66 of the General Statutes."

SECTION 24. G.S. 66-326(d) reads as rewritten:

"(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in ~~G.S. 25-1-201(20)~~, G.S. 25-1-201(21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Chapter 25 of the General Statutes, including, if the applicable statutory requirements under G.S. 25-3-302(a), 25-7-501, or 25-9-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection."

PART II. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

SUBPART A. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE.

SECTION 25. Article 7 of Chapter 25 of the General Statutes is rewritten to read:

"Article 7.

"Documents of Title.

"PART 1.

"GENERAL.

"§ 25-7-101. Short title.

This Article may be cited as Uniform Commercial Code – Documents of Title.

"§ 25-7-102. Definitions and index of definitions.

(a) In this Article, unless the context otherwise requires:

- (1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- (2) "Carrier" means a person that issues a bill of lading.
- (3) "Consignee" means a person named in a bill of lading to whom or to whose order the bill promises delivery.
- (4) "Consignor" means a person named in a bill of lading as the person from whom the goods have been received for shipment.
- (5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
- (6) Reserved for future codification purposes.
- (7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
- (8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in

any other respect the agent or employee violated the issuer's instructions.

- (9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
- (10) Reserved for future codification purposes.
- (11) "Sign" means, with present intent to authenticate or adopt a record:
 - a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the record an electronic sound, symbol, or process.
- (12) "Shipper" means a person that enters into a contract of transportation with a carrier.
- (13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other Articles applying to this Article and the sections in which they appear are:

- (1) "Contract for sale," G.S. 25-2-106.
- (2) "Lessee in the ordinary course of business," G.S. 25-2A-103.
- (3) "Receipt" of goods, G.S. 25-2-103.

(c) In addition, Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-7-103. Relation of Article to treaty or statute.

(a) This Article is subject to any treaty or statute of the United States or regulatory statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

(b) This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee or otherwise regulating a bailee's business in respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between Article 40 of Chapter 66 of the General Statutes (the Uniform Electronic Transactions Act) and this Article, this Article governs.

"§ 25-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

"§ 25-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- (1) The person entitled under the electronic document surrenders control of the document to the issuer; and
- (2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

- (1) The electronic document ceases to have any effect or validity; and
- (2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

- (1) The person entitled under the tangible document surrenders possession of the document to the issuer; and
- (2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

- (1) The tangible document ceases to have any effect or validity; and
- (2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

"§ 25-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6) of this subsection, unalterable;
- (2) The authoritative copy identifies the person asserting control as:
 - a. The person to whom the document was issued; or
 - b. If the authoritative copy indicates that the document has been transferred, the person to whom the document was most recently transferred;
- (3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

- (4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

"PART 2.

"WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

"§ 25-7-201. Person that may issue a warehouse receipt; storage under bond.

- (a) A warehouse receipt may be issued by any warehouse.
- (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

"§ 25-7-202. Form of warehouse receipt; effect of omission.

- (a) A warehouse receipt need not be in any particular form.
- (b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:
 - (1) A statement of the location of the warehouse facility where the goods are stored;
 - (2) The date of issue of the receipt;
 - (3) The unique identification code of the receipt;
 - (4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
 - (5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
 - (6) A description of the goods or the packages containing them;
 - (7) The signature of the warehouse or its agent;
 - (8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
 - (9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.
- (c) A warehouse may insert in its receipt any terms that are not contrary to this Chapter and do not impair its obligation of delivery under G.S. 25-7-403 or its duty of care under G.S. 25-7-204. Any contrary provision is ineffective.

"§ 25-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or
- (2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

"§ 25-7-204. Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any statute that imposes a higher responsibility upon the warehouse or invalidates a contractual limitation that would be permissible under this Article.

"§ 25-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

"§ 25-7-206. Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to G.S. 25-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and G.S. 25-7-210, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the

warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this Article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to whom the warehouse would have been bound to deliver the goods.

"§ 25-7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

"§ 25-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

"§ 25-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Article 9 of this Chapter.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against

any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - a. Actual or apparent authority to ship, store, or sell;
 - b. Power to obtain delivery under G.S. 25-7-403; or
 - c. Power of disposition under G.S. 25-2-403, 25-2A-304(2), 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule of law; or
- (2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

"§ 25-7-210. Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

- (1) All persons known to claim an interest in the goods must be notified.
- (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
- (3) The sale must conform to the terms of the notification.
- (4) The sale must be held at the nearest suitable place to where the goods are held or stored.

- (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.
- (c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this Article.
- (d) A warehouse may buy at any public sale held pursuant to this section.
- (e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against whom the lien was valid, despite the warehouse's noncompliance with this section.
- (f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to whom the warehouse would have been bound to deliver the goods.
- (g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
- (h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this section.
- (i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

"PART 3.

"BILLS OF LADING: SPECIAL PROVISIONS.

"§ 25-7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling.

- (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.
- (b) If goods are loaded by the issuer of a bill of lading:
 - (1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and
 - (2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

"§ 25-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

- (1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
- (2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

"§ 25-7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

- (1) The holder of a negotiable bill;
- (2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

- (3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
- (4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to whom the bill is duly negotiated may hold the bailee according to the original terms.

"§ 25-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this Article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

"§ 25-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to G.S. 25-7-105, may procure a substitute bill to be issued at any place designated in the request.

"§ 25-7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

"§ 25-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any

other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

"§ 25-7-308. Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but shall be retained by the carrier, subject to the terms of the bill of lading and this Article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to whom the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in G.S. 25-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

"§ 25-7-309. Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is

advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

"PART 4.

"WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

"§ 25-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this Article on an issuer apply to a document of title even if:

- (1) The document does not comply with the requirements of this Article or of any other statute, rule, or regulation regarding its issuance, form, or content;
- (2) The issuer violated laws regulating the conduct of its business;
- (3) The goods covered by the document were owned by the bailee when the document was issued; or
- (4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

"§ 25-7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to G.S. 25-7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

"§ 25-7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

- (1) Delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
- (4) The exercise by a seller of its right to stop delivery pursuant to G.S. 25-2-705 or by a lessor of its right to stop delivery pursuant to G.S. 25-2A-526;
- (5) A diversion, reconsignment, or other disposition pursuant to G.S. 25-7-303;
- (6) Release, satisfaction, or any other personal defense against the claimant; or
- (7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against whom the document of title does not confer a right under G.S. 25-7-503(a):

- (1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
- (2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to whom the document is duly negotiated.

"§ 25-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this Article is not liable for the goods even if:

- (1) The person from whom the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
- (2) The person to whom the bailee delivered the goods did not have authority to receive the goods.

"PART 5.

"WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

"§ 25-7-501. Form of negotiation and requirements of due negotiation.

- (a) The following rules apply to a negotiable tangible document of title:
 - (1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.
 - (2) If the document's original terms run to bearer, it is negotiated by delivery alone.
 - (3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
 - (4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.
 - (5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.
- (b) The following rules apply to a negotiable electronic document of title:
 - (1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.
 - (2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
 - (3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the

regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

"§ 25-7-502. Rights acquired by due negotiation.

(a) Subject to G.S. 25-7-205 and G.S. 25-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document;
- (2) Title to the goods;
- (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this Article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order, and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to G.S. 25-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

- (1) The due negotiation or any prior due negotiation constituted a breach of duty;
- (2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
- (3) A previous sale or other transfer of the goods or document has been made to a third person.

"§ 25-7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - a. Actual or apparent authority to ship, store, or sell;
 - b. Power to obtain delivery under G.S. 25-7-403; or
 - c. Power of disposition under G.S. 25-2-403, 25-2A-304(2), 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule of law; or
- (2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to whom a negotiable warehouse receipt or bill of lading covering the

goods has been duly negotiated. That title may be defeated under G.S. 25-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

"§ 25-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- (1) By those creditors of the transferor which could treat the transfer as void under G.S. 25-2-402 or G.S. 25-2A-308;
- (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under G.S. 25-2-705 or a lessor under G.S. 25-2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

"§ 25-7-505. Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

"§ 25-7-506. Delivery without indorsement; right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

"§ 25-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under G.S. 25-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) The document is genuine;
- (2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

- (3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

"§ 25-7-508. Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

"§ 25-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5 of this Chapter.

"PART 6.

"WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS.

"§ 25-7-601. Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document, and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorneys' fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery.

"§ 25-7-602. Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

"§ 25-7-603. Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action."

**SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF
THE UNIFORM COMMERCIAL CODE.**

SECTION 26. G.S. 25-1-201(b), as enacted by Part I of this act, reads as rewritten:

"(b) Subject to definitions contained in other articles of this Chapter that apply to particular articles or parts thereof:

...

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

...

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) ~~"Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the record document and the goods it covers. the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.~~

...

(21) "Holder" means:

- a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; ~~or~~
- b. The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in ~~possession~~ possession; ~~or~~
- c. The person in control of a negotiable electronic document of title.

...

(42) "Warehouse receipt" means a ~~receipt document of title~~ issued by a person engaged in the business of storing goods for hire."

SECTION 27. G.S. 25-2-103(3) reads as rewritten:

"(3) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in other Articles apply to this ~~article~~:Article:

~~"Check."~~ G.S. 25-3-104.

~~"Consignee."~~ G.S. 25-7-102.

~~"Consignor."~~ G.S. 25-7-102.

~~"Consumer Goods."~~ G.S. 25-9-102.

~~"Dishonor."~~ G.S. 25-3-502.

~~"Draft."~~ G.S. 25-3-104.

"Check" G.S. 25-3-104.

"Consignee" G.S. 25-7-102.

"Consignor" G.S. 25-7-102.

"Consumer Goods" G.S. 25-9-102.

"Dishonor" G.S. 25-3-502.

"Draft" G.S. 25-3-104."

SECTION 28. G.S. 25-2-104(2) reads as rewritten:

"(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (G.S. 25-2-707)."

SECTION 29. G.S. 25-2-310 reads as rewritten:

"§ 25-2-310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (G.S. 25-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

SECTION 30. G.S. 25-2-323(2) reads as rewritten:

"(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

- (a) due tender of a single part is acceptable within the provisions of this ~~article~~ Article on cure of improper delivery (subsection (1) of G.S.25-2-508); and
- (b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate."

SECTION 31. G.S. 25-2-401(3) reads as rewritten:

"(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

- (a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such ~~documents;~~ documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
- (b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting."

SECTION 32. G.S. 25-2-503(4) and (5) read as rewritten:

"(4) Where goods are in the possession of a bailee and are to be delivered without being moved

- (a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
- (b) tender to the buyer of a non-negotiable document of title or of a ~~written direction to record directing~~ the bailee to deliver is sufficient tender unless the buyer seasonably objects, ~~and~~ and, except as otherwise provided in Article 9 of this Chapter, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

- (a) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of G.S. 25-2-323); and
- (b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection."

SECTION 33. G.S. 25-2-505 reads as rewritten:

"§ 25-2-505. **Seller's shipment under reservation.**

- (1) Where the seller has identified goods to the contract by or before shipment:
 - (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His

procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

- (b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of G.S. 25-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within ~~the preceding section G.S. 25-2-504~~ but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable ~~document~~, document of title."

SECTION 34. G.S. 25-2-506(2) reads as rewritten:

"(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently ~~regular on its face~~, regular."

SECTION 35. G.S. 25-2-509(2) reads as rewritten:

"(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

- (a) on his receipt of possession or control of a negotiable document of title covering the goods; or
- (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or
- (c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written direction to deliver~~, deliver in a record, as provided in subsection (4)(b) of G.S. 25-2-503."

SECTION 36. G.S. 25-2-605(2) reads as rewritten:

"(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 37. G.S. 25-2-705(2) and (3) read as rewritten:

"(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman; a warehouse~~; or
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
- (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

- (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

SECTION 38. G.S. 25-2A-103 reads as rewritten:

"§ 25-2A-103. Definitions and index of definitions.

- (1) In this Article unless the context otherwise requires:

- (a) "Buyer in ordinary course of ~~{business,}~~ business" means a person ~~who~~ who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the ~~{goods,}~~ goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

...

- (o) "Lessee in ordinary course of business" means a person ~~who~~ who, in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the ~~{goods,}~~ goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

..."

SECTION 39. G.S. 25-2A-514(2) reads as rewritten:

"(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 40. G.S. 25-2A-526(2) reads as rewritten:

"(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse."

SECTION 41. G.S. 25-4-104(c), as amended by Section 14 of this act, reads as rewritten:

"(c) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in other Articles apply to this Article:

"Acceptance"	G.S. 25-3-409.
"Alteration"	G.S. 25-3-407.
"Cashier's check"	G.S. 25-3-104.
"Certificate of deposit"	G.S. 25-3-104.
"Certified check"	G.S. 25-3-409.

"Check"	G.S. 25-3-104.
"Draft"	G.S. 25-3-104.
"Holder in due course"	G.S. 25-3-302.
"Instrument"	G.S. 25-3-104.
"Notice of dishonor"	G.S. 25-3-503.
"Order"	G.S. 25-3-103.
"Ordinary care"	G.S. 25-3-103.
"Person entitled to enforce"	G.S. 25-3-301.
"Presentment"	G.S. 25-3-501.
"Promise"	G.S. 25-3-103.
"Prove"	G.S. 25-3-103.
"Teller's check"	G.S. 25-3-104.
"Unauthorized signature"	G.S. 25-3-403."

SECTION 42. G.S. 25-4-208(c) reads as rewritten:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

- (1) No security agreement is necessary to make the security interest enforceable (G.S. 25-9-203(b)(3)a.);
- (2) No filing is required to perfect the security interest; and
- (3) The security interest has priority over conflicting perfected security interests in the item, accompanying ~~documents~~documents, or proceeds."

SECTION 43. G.S. 25-8-103 reads as rewritten:

"§ 25-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

...

(f) A commodity contract, as defined in G.S. 25-9-102(a)(15), is not a security or financial asset.

(g) A document of title is not a financial asset unless G.S. 25-8-102(a)(9)(iii) applies."

SECTION 44. G.S. 25-9-102 reads as rewritten:

"§ 25-9-102. Definitions and index of definitions.

(a) Article 9 definitions. – In this Article:

...

(30) "Document" means a document of title or a receipt of the type described in ~~G.S. 25-7-201(2)~~G.S. 25-7-201(b).

...

(b) Definitions in other articles. –"Control" as provided in G.S. 25-7-106 and the
The following definitions in other Articles of this Chapter apply to this Article:

"Applicant"	G.S. 25-5-102.
"Beneficiary"	G.S. 25-5-102.
"Broker"	G.S. 25-8-102.
"Certificated security"	G.S. 25-8-102.
"Check"	G.S. 25-3-104.

"Clearing corporation"	G.S. 25-8-102.
"Contract for sale"	G.S. 25-2-106.
"Customer"	G.S. 25-4-104.
"Entitlement holder"	G.S. 25-8-102.
"Financial asset"	G.S. 25-8-102.
"Holder in due course"	G.S. 25-3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	G.S. 25-5-102.
"Issuer" (with respect to a security)	G.S. 25-8-201.
" <u>Issuer" (with respect to documents of title)</u> "	<u>G.S. 25-7-102.</u>
"Lease"	G.S. 25-2A-103.
"Lease agreement"	G.S. 25-2A-103.
"Lease contract"	G.S. 25-2A-103.
"Leasehold interest"	G.S. 25-2A-103.
"Lessee"	G.S. 25-2A-103.
"Lessee in ordinary course of business"	G.S. 25-2A-103.
"Lessor"	G.S. 25-2A-103.
"Lessor's residual interest"	G.S. 25-2A-103.
"Letter of credit"	G.S. 25-5-102.
"Merchant"	G.S. 25-2-104.
"Negotiable instrument"	G.S. 25-3-104.
"Nominated person"	G.S. 25-5-102.
"Note"	G.S. 25-3-104.
"Proceeds of a letter of credit"	G.S. 25-5-114.
"Prove"	G.S. 25-3-103.
"Sale"	G.S. 25-2-106.
"Securities account"	G.S. 25-8-501.
"Securities intermediary"	G.S. 25-8-102.
"Security"	G.S. 25-8-102.
"Security certificate"	G.S. 25-8-102.
"Security entitlement"	G.S. 25-8-102.
"Uncertificated security"	G.S. 25-8-102."

SECTION 45. G.S. 25-9-203 (b) reads as rewritten:

"(b) Enforceability. – Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) Value has been given;
- (2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) One of the following conditions is met:
 - a. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - b. The collateral is not a certificated security and is in the possession of the secured party under G.S. 25-9-313 pursuant to the debtor's security agreement;
 - c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party

under G.S. 25-8-301 pursuant to the debtor's security agreement; or

- d. The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, or electronic documents, and the secured party has control under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107 pursuant to the debtor's security agreement."

SECTION 46. G.S. 25-9-207(c) reads as rewritten:

"(c) Rights and duties when secured party in possession or control. – Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107:

- (1) May hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) May create a security interest in the collateral."

SECTION 47. G.S. 25-9-208(b) reads as rewritten:

"(b) Duties of secured party after receiving demand from debtor. – Within 10 days after receiving an authenticated demand by the debtor:

- (1) A secured party having control of a deposit account under 25-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
- (2) A secured party having control of a deposit account under G.S. 25-9-104(a)(3) shall:
 - a. Pay the debtor the balance on deposit in the deposit account; or
 - b. Transfer the balance on deposit into a deposit account in the debtor's name;
- (3) A secured party, other than a buyer, having control of electronic chattel paper under G.S. 25-9-105 shall:
 - a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- (4) A secured party having control of investment property under G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security

entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

- (5) A secured party having control of a letter-of-credit right under G.S. 25-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured ~~party-~~
party; and
- (6) A secured party having control of an electronic document shall:
 - a. Give control of the electronic document to the debtor or its designated custodian;
 - b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party."

SECTION 48. G.S. 25-9-301(3) reads as rewritten:

- "(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
- a. Perfection of a security interest in the goods by filing a fixture filing;
 - b. Perfection of a security interest in timber to be cut; and
 - c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral."

SECTION 49. G.S. 25-9-310(b) reads as rewritten:

"(b) Exceptions: filing not necessary. – The filing of a financing statement is not necessary to perfect a security interest:

- (1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);
- (2) That is perfected under G.S. 25-9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in G.S. 25-9-311(a);
- (4) In goods in possession of a bailee which is perfected under G.S. 25-9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments which is perfected without ~~filing~~ filing, control, or possession under G.S. 25-9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under G.S. 25-9-313;

- (7) In a certificated security which is perfected by delivery of the security certificate to the secured party under G.S. 25-9-313;
- (8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under G.S. 25-9-314;
- (9) In proceeds which is perfected under G.S. 25-9-315; or
- (10) That is perfected under G.S. 25-9-316."

SECTION 50. G.S. 25-9-312(e) reads as rewritten:

"(e) Temporary perfection: new value. – A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement."

SECTION 51. G.S. 25-9-313(a) reads as rewritten:

"(a) Perfection by possession or delivery. – Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under G.S. 25-8-301."

SECTION 52. G.S. 25-9-314(a) and (b) read as rewritten:

"(a) Perfection by control. – A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. – A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit ~~rights~~ rights, or electronic documents is perfected by control under G.S. 25-7-106, 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control."

SECTION 53. G.S. 25-9-317(b) and (d) read as rewritten:

"(b) Buyers that receive delivery. – Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

...

(d) Licensees and buyers of certain collateral. – A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected."

SECTION 54. G.S. 25-9-338 reads as rewritten:

"§ 25-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed:

- (1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder

of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

- (2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral."

SECTION 55. G.S. 25-9-601(b) reads as rewritten:

"(b) Rights and duties of secured party in possession or control. – A secured party in possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207."

SECTION 56. G.S. 25-10-104 is repealed.

SUBPART C. OTHER CONFORMING AMENDMENTS AND REPEALS.

SECTION 57. G.S. 106-451.19 reads as rewritten:

"§ **106-451.19. Contents of receipts.**

Every receipt issued for cotton stored in a warehouse licensed under this Article shall contain the information required under the United States Warehouse Act, 7 U.S.C. § 214, et seq., and the regulations promulgated thereunder. ~~embody within its written or printed terms:~~

- (1) ~~The location of the warehouse in which the cotton is stored;~~
- (2) ~~The date of issue of the receipt;~~
- (3) ~~The consecutive number of the receipt;~~
- (4) ~~A statement whether the cotton received will be delivered to the bearer, to a specified person, or to a specified person or his order;~~
- (5) ~~The rate of storage charges;~~
- (6) ~~A description of the cotton received, showing the quantity thereof and a description of each bale by mark, number, or other means of identification and the weight of each bale;~~
- (7) ~~The grade or other classification of the cotton received and the standard or description in accordance with which such classification has been made;~~
- (8) ~~A statement that the receipt is issued subject to this Article and the rules and regulations prescribed hereunder;~~
- (9) ~~If the receipt be issued for cotton of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership;~~
- (10) ~~A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien; and~~
- (11) ~~Signature of the warehouseman, which may be made by his authorized agent."~~

SECTION 58.(a) Article 5 of Chapter 27 of the General Statutes is repealed.

SECTION 58.(b) Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

PART III. MISCELLANEOUS PROVISIONS, DIRECTIONS, AND EFFECTIVE DATE.

SECTION 59. Subparts A and B of Part II of this act apply to a document of title that is issued or a bailment that arises on or after the effective date of this act.

Subparts A and B of Part II of this act do not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after the effective date of this act. Subparts A and B of Part II of this act do not apply to a right of action that has accrued before the effective date of this act.

SECTION 60. A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute.

SECTION 61. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to Uniform Commercial Code Revised Article 1 and Uniform Commercial Code Revised Article 7 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 62. This act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

Became law upon approval of the Governor at 10:58 a.m. on the 13th day of July, 2006.

H.B. 2098

Session Law 2006-113

AN ACT TO AMEND THE LAW RELATING TO THE PROTECTION OF ANIMALS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CIVIL REMEDY FOR CRUELTY AMENDMENTS.

SECTION 1.1. G.S. 19A-3 reads as rewritten:

"§ 19A-3. **Preliminary ~~injunction~~-injunction; care of animal pending hearing on the merits.**

(a) Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such preliminary injunction, if the ~~complainant~~-plaintiff so requests, may give the ~~complainant~~-plaintiff the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the ~~complainant~~-plaintiff to take possession of the ~~animal~~. animal as custodian.

(b) The plaintiff as custodian may employ a veterinarian to provide necessary medical care for the animal without any additional court order. Prior to taking such action, the plaintiff as custodian shall consult with, or attempt to consult with, the defendant in the action, but the plaintiff as custodian may authorize such care without the defendant's consent. Notwithstanding the provisions of this subsection, the plaintiff as custodian may not have an animal euthanized without written consent of the

defendant or a court order that authorizes euthanasia upon the court's finding that the animal is suffering due to terminal illness or terminal injury.

(c) The plaintiff as custodian may place an animal with a foster care provider. The foster care provider shall return the animal to the plaintiff as custodian on demand."

SECTION 1.2. G.S. 19A-4 reads as rewritten:

"§ 19A-4. Permanent injunction.

(a) In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction and dismissal of the action along with dissolution of any preliminary injunction that had been issued.

(b) If the plaintiff prevails, the court in its discretion may include the costs of food, water, shelter, and care, including medical care, provided to the animal, less any amounts deposited by the defendant under G.S. 19A-70, as part of the costs allowed to the plaintiff under G.S. 6-18. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner. For good cause shown, the court may also enjoin the defendant from acquiring new animals for a specified period of time or limit the number of animals the defendant may own or possess during a specified period of time.

(c) If the final judgment entitles the defendant to regain possession of the animal, the custodian shall return the animal, including taking any necessary steps to retrieve the animal from a foster care provider.

(d) The court shall consider and may provide for custody and care of the animal until the time to appeal expires or all appeals have been exhausted."

PART II. DEPOSIT REQUIREMENT WHEN COUNTY OR MUNICIPAL ANIMAL SHELTER TAKES CUSTODY OF ANIMAL PENDING LITIGATION.

SECTION 2.1. Article 6 of Chapter 19A of the General Statutes reads as rewritten:

"Article 6.

"Care of ~~Dogs Illegally Used for Fighting~~. Animal Subjected to Illegal Treatment.

"§ 19A-70. Care of ~~dogs illegally used for fighting~~. animal subjected to illegal treatment.

(a) In every arrest under ~~G.S. 14-362.2~~, any provision of Article 47 of Chapter 14 of the General Statutes or under G.S. 67-4.3 or upon the commencement of an action under Article 1 of this Chapter by a county or municipality, by a county-approved animal cruelty investigator, by other county or municipal official, or by an organization operating a county or municipal shelter under contract, if an animal shelter takes custody of ~~dogs illegally used for fighting~~, an animal, the ~~animal~~ operator of the shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred by the animal shelter in caring for and providing for the ~~dogs~~ animal pending the disposition of the ~~charges~~. litigation. For purposes of this section, "reasonable expenses" includes the cost of providing food, water, shelter, and care, including medical care, for at least 30 days.

(b) Upon receipt of a petition, the court shall set a hearing on the ~~petition~~ petition to determine the need to care for and provide for the animal pending the disposition of the litigation. The hearing shall be conducted no less than 10 and no more than 15 business days after the petition is filed. The operator of the animal shelter shall mail written notice of the hearing and a copy of the petition to the defendant at the address contained in the criminal ~~charges.~~ charges or the complaint or summons by which a civil action was initiated. If the defendant is in a local detention facility at the time the petition is filed, the operator of the animal shelter shall also provide notice to the custodian of the detention facility.

(c) The court shall set the amount of funds necessary for 30 days' care after taking into consideration all of the facts and circumstances of the case, including the need to care for and provide for the animal pending the disposition of the litigation, the recommendation of the operator of the animal shelter and shelter, the estimated cost of caring for and providing for the dogs animal, ~~as well as and~~ the defendant's ability to pay. If the court determines that the defendant is unable to deposit funds, the court may consider issuing an order under subsection (f) of this section.

Any order for funds to be deposited pursuant to this section shall state that if the operator of the animal shelter files an affidavit with the clerk of superior court, at least two business days prior to the expiration of a 30-day period, stating that, to the best of the ~~shelter's~~ affiant's knowledge, the ~~criminal~~ case against the defendant has not yet been resolved, the order shall be automatically renewed every 30 days until the ~~criminal~~ case is resolved.

(d) If the court orders that funds be deposited, the amount of funds necessary for 30 days shall be posted with the clerk of superior court. The defendant shall also deposit the same amount with the clerk of superior court every 30 days thereafter until the ~~criminal charges are~~ litigation is resolved, unless the defendant requests a hearing no less than five business days prior to the expiration of a 30-day period. If the defendant fails to deposit the funds within five business days of the initial hearing, or five business days of the expiration of a 30-day period, the ~~dogs are~~ animal is forfeited by operation of law. If funds have been deposited in accordance with this section, the operator of the animal shelter may draw from the funds the actual costs incurred in caring for the ~~dogs.~~ animal.

In the event of forfeiture, the animal shelter may determine whether ~~any of the dogs are~~ the animal is suitable for adoption and whether adoption can be arranged for ~~any of the dogs.~~ the animal. The ~~dogs animal~~ may not be adopted by the defendant or by any person residing in the defendant's ~~household, and~~ household. If the adopted animal is a dog used for fighting, the animal shelter shall notify any persons adopting the ~~dogs~~ dog of the liability provisions for owners of dangerous dogs under Article 1A of Chapter 67 of the General Statutes. If no adoption can be arranged after the forfeiture, or the ~~dogs are~~ animal is unsuitable for adoption, the shelter shall humanely euthanize the ~~dogs.~~ animal.

(e) The deposit of funds shall not prevent the animal shelter from disposing of the ~~dogs animal~~ prior to the expiration of the 30-day period covered by the deposit if the court makes a final determination of the charges or claims against the defendant. Upon ~~the adjudication of the charges,~~ determination, the defendant is entitled to a refund for any portion of the deposit not incurred as expenses by the animal shelter. ~~A person who is adjudicated not guilty of the charges under G.S. 14-362.2 shall be entitled to a full refund of the deposit.~~ A person who is acquitted of all criminal charges or not found to have committed animal cruelty in a civil action under Article 1 of this Chapter is

entitled to a refund of the deposit remaining after any draws from the deposit in accordance with subsection (d) of this section.

(f) Pursuant to subsection (c) of this section, the court may order a defendant to provide necessary food, water, shelter, and care, including any necessary medical care, for any ~~dogs that are~~ animal that is the basis of the charges or claims against the defendant without the removal of the ~~dogs~~ animal from the existing location and until the charges or claims against the defendant are adjudicated. If the court issues such an order, the court shall provide for an animal control officer or other law enforcement officer to make regular visits to the location to ensure that the ~~dogs are~~ animal is receiving necessary food, water, shelter, and care, including any necessary medical care, and to impound the ~~animals if they are~~ animal if it is not receiving those necessities."

PART III. CLARIFY THAT THE PROHIBITION AGAINST DOGFIGHTING INCLUDES FIGHTS BETWEEN DOGS AND OTHER ANIMALS.

SECTION 3.1. G.S. 14-362.2 reads as rewritten:

"§ 14-362.2. Dog fighting and baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under ~~his~~ the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is void, and a lessor who knows this use is made or is intended to be made of ~~his~~ the lessor's property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the ~~fighting or~~ baiting of that dog or the fighting of that dog with another dog or with another animal is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.

(d) This section does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

PART IV. EFFECTIVE DATE.

SECTION 4.1. This act becomes effective December 1, 2006, and applies to actions commenced on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2006.

Became law upon approval of the Governor at 10:58 a.m. on the 13th day of July, 2006.

H.B. 2174

Session Law 2006-114

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act,

29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise provided in this section."

SECTION 2. This act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 11:12 a.m. on the 13th day of July, 2006.

S.B. 1928

Session Law 2006-115

AN ACT AUTHORIZING THE TOWN OF CLAYTON AND THE CITY OF REIDSVILLE TO LIMIT THE CLEAR-CUTTING OF TREES IN BUFFER ZONES PRIOR TO DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) A municipality may adopt ordinances to regulate the removal and preservation of existing trees prior to development within a perimeter buffer zone of up to 50 feet along public roadways and property boundaries adjacent to developed properties and up to 25 feet along property boundaries adjacent to undeveloped properties.

SECTION 1.(b) Ordinances adopted pursuant to this section shall:

- (1) Provide that the requirement of the ordinances applies only to activity occurring on undeveloped property prior to the approval of a site plan, subdivision plan, or other authorized development plan or permit for the property and that, after approval of a site plan, subdivision plan, or other authorized development plan or permit for the property, the property, including the property within the perimeter buffer zones, may be developed in accordance with applicable regulations governing development of the property.
- (2) Provide that the area of the required perimeter buffer zones shall not exceed twenty percent (20%) of the area of the tract, net of public road rights-of-way, and any required conservation easements.
- (3) Provide that the perimeter buffer zones that adjoin public roadways shall be measured from the edge of the public road right-of-way.
- (4) Provide that tracts of two acres or less are exempt from the requirements of the ordinances.
- (5) Provide that a survey of individual trees is not required.
- (6) Include reasonable provisions for access onto and within the subject property.
- (7) Exclude forestry activities on property that is taxed on the basis of its present-use value as agricultural, horticultural, or forestland under Article 12 of Chapter 105 of the General Statutes and forestry activity that is conducted in accordance with a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes. However, for the properties described in this subdivision, a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of the forestry activity if the forestry activity results in the removal of all or substantially all of the trees that were protected

under an ordinance adopted pursuant to this act from the tract of land for which the permit or plan approval is sought.

- (8) Provide that a municipality may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of the removal of trees from the required perimeter buffer zones if the removal of trees results in the removal of all or substantially all of the trees that were protected under an ordinance adopted pursuant to this act from the tract of land for which the permit or plan approval is sought.

SECTION 1.(c) Before adopting an ordinance authorized by this section, the governing board of the municipality shall hold a public hearing on the proposed ordinance. Notice of the public hearing shall be given in accordance with G.S. 160A-364.

SECTION 1.(d) Nothing in this section shall be construed to limit or be limited by any other existing laws or ordinances.

SECTION 1.(e) This section applies to the Town of Clayton and the City of Reidsville only and to property located within the municipalities' corporate limits and extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law on the date it was ratified.

H.B. 845

Session Law 2006-116

AN ACT TO ADD GASTON, SURRY, AND WILKES COUNTIES, AND THE TOWNS OF OCEAN ISLE BEACH AND SURF CITY, TO THE AREAS IN WHICH LAW ENFORCEMENT OFFICERS AND EMPLOYEES MAY OPERATE UNREGISTERED ALL-TERRAIN VEHICLES ON HIGHWAYS WITH SPEED LIMITS OF THIRTY-FIVE MILES PER HOUR OR LESS AND TO ALLOW THE CITY OF WHITEVILLE TO DECLARE RESIDENTIAL BUILDINGS IN COMMUNITY DEVELOPMENT TARGET AREAS UNSAFE AND TO DEMOLISH THOSE BUILDINGS USING THE SAME PROCESS AUTHORIZED FOR THE DEMOLITION OF UNSAFE NONRESIDENTIAL BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. If Senate Bill 1199, 2005 Regular Session, does not become law, then Section 3 of S.L. 2004-108, as rewritten by S.L. 2005-305 and S.L. 2006-25, reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the City of Albemarle, and the Towns of Beaufort, Highlands, Southern Shores, and Mint Hill only. Section 2 of this act applies to the Towns of Cramerton, Dallas, Duck, Kill Devil Hills, Kitty Hawk, Nags Head, Ocean Isle Beach, Surf City, and the City of Kings Mountain and the ~~County~~ Counties of Currituck-Currituck, Gaston, Surry, and Wilkes only. The term 'municipal employee' shall include employees of a county."

SECTION 2. If Senate Bill 1199, 2005 Regular Session, becomes law, then Section 3 of S.L. 2004-108, as rewritten by S.L. 2005-305, S.L. 2006-25, and Senate Bill 1199, 2005 Regular Session, reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the City of Albemarle and the Towns of Beaufort, Highlands, Southern Shores, and Mint Hill only. Section 2 of this act applies to the Towns of Cramerton, Dallas, Duck, Kill Devil Hills, Kitty Hawk, ~~Nags Head~~ Nags Head, Ocean Isle Beach, Surf City, and Stanley, the Cities of Belmont, Cherryville, Gastonia, Kings Mountain and Mount Holly, and the Counties of ~~Cleveland and Currituck~~ Cleveland, Currituck, Gaston, Surry, and Wilkes only. The term 'municipal employee' shall include employees of a county."

SECTION 3. Section 4 of S.L. 2002-118, as amended by S.L. 2003-23, S.L. 2003-42, and S.L. 2004-6, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act apply to the Cities of Clinton, Durham, Fayetteville, Goldsboro, High Point, ~~and Lumberton~~, Lumberton, and Whiteville, and the Towns of Garner, Franklin, Hope Mills and Spring Lake only."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law on the date it was ratified.

H.B. 2223

Session Law 2006-117

AN ACT TO AMEND THE LAW ESTABLISHING THE CHARLOTTE FIREFIGHTERS' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Subdivision (9) of Section 2 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, as amended by Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, S.L. 2001-22, and S.L. 2002-43, reads as rewritten:

"(9) 'Compensation' means the remuneration reportable on Form W-2 earned by a Member for services performed as an employee of the Charlotte Fire Department prior to any reductions pursuant to sections 125, 401(k), 402(k), 402(e)(3), 414(h)(2), ~~403(b), 408(k)(6)~~, and 457 of the Internal Revenue Code. Compensation shall include payments for unused sick and vacation days, longevity payments, bonus payments, and merit increases. For the purpose of calculating a Member's Final Average Salary, (i) payments for unused sick and vacation days shall be included as Compensation to the extent that the vacation and sick days for which payments are made could have accrued during two Plan Years of the Member's last five years of Membership Service, and (ii) payments for longevity shall be included as Compensation to the extent such payments were made during two Plan Years of the Member's last five years of Membership Service. Effective July 1, 2002, for purposes of applying the limitations described in Section 51 of this Act, compensation paid or made available during such limitation years shall also include elective amounts that are not includible in the gross income of the Member by reason of section 132(f)(4) of the Internal Revenue Code.

In addition to the other applicable limitations set forth in this Act, and notwithstanding any other provision of this Act to the contrary, for Plan Years beginning on or after January 1, 2002, the annual Compensation of each Member taken into account under the Act shall not exceed two hundred thousand dollars (\$200,000), the annual compensation limit under section 401(a)(17) of the Internal Revenue Code, as amended by section 611(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001. Annual compensation means compensation during the Plan Year or such other 12-month period over which Compensation is otherwise determined (the 'determination period'). If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For purposes of determining benefit accruals in a plan year, beginning after December 31, 2001, the compensation limit for any prior determination period shall be two hundred thousand dollars (\$200,000). The two hundred thousand dollars (\$200,000) limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code."

SECTION 2. Section 13.1 of Chapter 926 of the 1947 Session Laws, as rewritten by Section 1 of Chapter 830 of the 1991 Session Laws, Chapter 171 of the 1995 Session Laws, Chapter 640 of the 1993 Session Laws, S.L. 1999-100, S.L. 2001-22, and S.L. 2002-43, is amended by adding a new subsection to read:

"(c) In the event of a mandatory distribution greater than one thousand dollars (\$1,000) that is made without the Member's consent and is made to the Member before the Member attains the later of age 62 or Normal Retirement Age, if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution from the Plan, the Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator."

SECTION 3. None of the provisions of this act shall create an additional liability for the Charlotte Firefighters' Retirement System unless sufficient assets are available to pay for the liability.

SECTION 4. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law on the date it was ratified.

H.B. 2259

Session Law 2006-118

AN ACT TO AUTHORIZE THE TOWNS OF ELKIN, PILOT MOUNTAIN, AND DOBSON TO LEVY A SIX PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

PART I. ELKIN OCCUPANCY TAX

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross

receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Elkin shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. PILOT MOUNTAIN OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) **Authorization and Scope.** – The Pilot Mountain Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Pilot Mountain shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pilot Mountain Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Pilot Mountain and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

- (1) **Net proceeds.** – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) **Promote travel and tourism.** – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) **Tourism-related expenditures.** – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Pilot Mountain Tourism Development Authority. – (a) **Appointment and Membership.** – When the Pilot Mountain Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Pilot Mountain shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Pilot Mountain Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART III. DOBSON OCCUPANCY TAX

SECTION 3.1. Occupancy Tax. – (a) **Authorization and Scope.** – The Dobson Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The Town of Dobson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Dobson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in Dobson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

- (1) **Net proceeds.** – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) **Promote travel and tourism.** – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) **Tourism-related expenditures.** – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 3.2. Dobson Tourism Development Authority. – (a) **Appointment and Membership.** – When the Dobson Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall

provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Dobson shall be the ex officio finance officer of the Authority.

SECTION 3.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Dobson Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART IV. ADMINISTRATIVE PROVISIONS

SECTION 4. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Dobson, Elkin, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Pilot Mountain, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law on the date it was ratified.

S.B. 1444

Session Law 2006-119

AN ACT TO INCREASE THE SIZE OF THE ROCKINGHAM COUNTY AIRPORT AUTHORITY AND PROVIDE FOR THREE-YEAR TERMS FOR ALL BOARD MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 622 of the 1963 Session Laws as amended by Chapter 122 of the 1979 Session Laws reads as rewritten:

"Section 1. There is hereby created an airport authority to be known as the "Rockingham County Airport Authority", which shall be a body politic and corporate. The said Authority shall be composed of ~~five~~seven members, to be selected and appointed as hereinafter set out. The members of said authority shall receive no compensation, per diem or otherwise but shall be allowed and paid actual expenses incurred in the transaction of business at the instance of the said Authority. The

members of the authority may receive reasonable compensation, per diem or otherwise for services rendered and shall be allowed and paid actual expenses incurred in the transaction of business at the instance of the said authority. To effectuate the increase from five to seven members, two additional members shall be appointed for terms commencing July 1, 2006."

SECTION 2. Section 2 of Chapter 622 of the 1963 Session Laws reads as rewritten:

"Sec. 2. Members of the said Authority shall be selected by the Board of County Commissioners of Rockingham County, and shall serve ~~terms of four (4) years each and~~ until their successors are selected and qualified. All appointments for terms beginning July 1, 2006, and thereafter shall be for three-year terms. The Authority shall determine its own organization and shall annually elect its officers who shall serve for terms of one (1) year. Officers shall be eligible to succeed themselves if re-elected at the annual meeting for election of officers. There shall be no residence requirements for the members of the Airport Authority other than that they be citizens of Rockingham County."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 2006.

Became law on the date it was ratified.

H.B. 945

Session Law 2006-120

AN ACT TO AUTHORIZE THE LEVY OF ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES IN THE TOWNS OF BENSON, BOILING SPRINGS, AND KENLY, TO AMEND THE OCCUPANCY TAXES IN CLAY COUNTY, HALIFAX, SELMA, AND SMITHFIELD AND TO AUTHORIZE THE TOWN OF CLAYTON TO HOLD AN ADVISORY REFERENDUM ON ELECTING SOME MEMBERS OF ITS TOWN COUNCIL BY DISTRICT AND SOME AT LARGE.

The General Assembly of North Carolina enacts:

PART I. BENSON OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Benson may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Benson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds

remitted to it under this subsection to promote travel and tourism in Benson and shall use the remainder for tourism-related expenditures in Benson. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Benson. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Benson or for tourism-related expenditures in the county that are outside of Benson. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Benson derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

PART II. BOILING SPRINGS OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Boiling Springs shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. KENLY OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Kenly may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The Town of Kenly shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws.

The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Kenly and shall use the remainder for tourism-related expenditures in Kenly. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Kenly. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of the district or for tourism-related expenditures in the county that are outside of Kenly. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Kenly derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

PART IV. HALIFAX COUNTY OCCUPANCY TAX.

SECTION 4. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"Section 1. Occupancy ~~tax~~ Tax. – (a) ~~Authorization and scope.~~ Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) ~~Authorization of additional tax.~~ Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~ shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~ shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) ~~Distribution and use~~Use of tax revenue.Tax Revenue. – Halifax County ~~must, shall,~~ on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must shall~~ use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must shall~~ use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 2.** Tourism Development Authority. = (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must shall~~ also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must shall~~ provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must shall~~ meet at the call of the chair and ~~must shall~~ adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must shall~~ report quarterly and at the close of the fiscal year to the Halifax County Board of County Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

PART V. SELMA OCCUPANCY TAX.

SECTION 5. Part X of S.L. 2001-439 reads as rewritten:

"SECTION 10.1. Occupancy ~~tax~~ Tax. – (a) Authorization and Scope. – The Selma Town Council of the Town of Selma may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Selma Town Council may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Selma Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

"SECTION 10.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"SECTION 10.1.(c) Distribution and Use of Tax Revenue. – The Town of Selma shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Selma and shall use the remainder for tourism-related expenditures in Selma. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Selma. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Selma or for tourism-related expenditures in the county that are outside of Selma. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Selma derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by

attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~"SECTION 10.2. A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration."~~

PART VI. SMITHFIELD OCCUPANCY TAX.

SECTION 6. Part XI of S.L. 2001-439 reads as rewritten:

"SECTION 11.1. Occupancy ~~tax~~ Tax. – (a) Authorization and Scope. – The Smithfield Town Council ~~of the Town of Smithfield~~ may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Smithfield Town Council may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Smithfield Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

"SECTION 11.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"SECTION 11.1.(c) Distribution and Use of Tax Revenue. – The Town of Smithfield shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Smithfield and shall use the remainder for tourism-related expenditures in Smithfield. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Smithfield. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Smithfield or for tourism-related expenditures in the county that are outside of Smithfield. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Smithfield derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred

thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a town by attracting tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~"SECTION 11.2. A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration."~~

PART VII. CLAY COUNTY OCCUPANCY TAX.

SECTION 7.1. Chapter 969 of the 1985 Session Laws, as amended by Chapter 195 of the 1987 Session Laws, reads as rewritten:

"Section 1. Occupancy Tax. (a) Authorization and Scope. ~~– The board of commissioners of a county may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). G.S. 105-164.4(a)(3).~~ This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection. A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~

~~(e) Distribution and Use of Tax Revenue. – Except as provided in Section 2 of this act for Durham County, a taxing county shall place the net proceeds of a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism in the county. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer. County, the distributing authority shall distribute and use the net proceeds of the occupancy tax levied under this section in accordance with this subsection. The distributing authority shall be the taxing county, unless a Tourism Development Authority is required to be established under Section 1.1 of this act. If a Tourism Development Authority is established, then the Tourism Development Authority shall be the distributing authority. The distributing authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the county and shall use the remainder for tourism-related expenditures.~~

~~The following definitions apply in this subsection:~~

- ~~(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.~~
- ~~(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.~~
- ~~(3) Tourism-related expenditures. – Expenditures that, in the judgment of the distributing authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a~~

calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 1.1. County Tourism Development Authority. – (a) Appointment and Membership. – When the annual net proceeds of the occupancy tax levied under Section 1 of this act exceed one hundred fifty thousand dollars (\$150,000), the county Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the county shall be the ex officio finance officer of the Authority.

(b) Duties. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall report quarterly and at the close of the fiscal year to the county board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 2. Use and Distribution of Tax Revenue in Durham County. Durham County shall retain fifty-seven and one-half percent (57-1/2%) of the revenue collected from a tax levied under this act and shall distribute the remaining forty-two and one-half percent (42-1/2%) of the revenue to the City of Durham. Funds retained by the county or distributed to the City of Durham may be used for any purpose authorized by law, except that at least twenty-five percent (25%) of the funds so retained or distributed must be used for promotion of travel and tourism.

Sec. 3. This act applies only to the following counties: Graham, Clay, Jackson, Durham, Macon, Polk, and Transylvania.

Sec. 4. This act is effective upon ratification."

SECTION 7.2. Section 3 of Chapter 118 of the 1987 Session Laws reads as rewritten:

"**Sec. 3.** This act applies only to the following counties: ~~Clay~~, Graham, Jackson, and Macon."

SECTION 7.3. This part applies only to Clay County.

PART VIII. UNIFORM PROVISIONS.

SECTION 8.1. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett County."

SECTION 8.2. G.S. 160A-215 reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Benson, Blowing Rock, Boiling Springs, Carolina Beach, Carrboro, Franklin, Kenly, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART IX. CLAYTON ADVISORY REFERENDUM ON TOWN COUNCIL VOTING DISTRICTS.

SECTION 9.1. The Clayton Town Council may, by resolution, direct the Johnston County Board of Elections to conduct an advisory referendum on whether the Town should consider amending the manner by which voters elect Council members. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on a ballot for such a referendum shall be:

"Should the Clayton Town council consider amending the manner by which voters elect Council members by designating that some members are elected from voting districts to be drawn by the Town Council and other members are elected at large?

[] YES [] NO"

SECTION 9.2. This part expires January 1, 2008.

PART X. REPEALS.

SECTION 10.1. If Senate Bill 1428, 2005 Regular Session becomes law, then PART IX of this act is repealed.

SECTION 10.2. If Senate Bill 1804, 2005 Regular Session becomes law, then PART II of this act is repealed and the part of Section 8.2 of this act that adds Boiling Springs to G.S. 160A-215 is repealed.

SECTION 10.3. If House Bill 2445, 2005 Regular Session becomes law, then PART IV of this act is repealed.

SECTION 10.4. If House Bill 770, 2005 Regular Session becomes law, then PART VII of this act is repealed and Section 8.1 of this act is repealed.

PART XI. EFFECTIVE DATE.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 2006.

Became law on the date it was ratified.

S.B. 383

Session Law 2006-121

AN ACT TO AMEND THE LAW ESTABLISHING THE WINSTON-SALEM FIREMEN'S RETIREMENT FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Section 18 of Chapter 388 of the 1973 Session Laws, as amended by Chapter 15 of the 1977 Session Laws, Chapter 284 of the 1979 Session Laws, Chapter 647 of the 1981 Session Laws, Chapter 464 of the 1983 Session Laws, Chapter 508 of the 1987 Session Laws, Chapter 793 of the 1989 Session Laws, S.L. 1998-92, and S.L. 2003-35, reads as rewritten:

"**Sec. 18.** If at any time there shall not be sufficient assets in the retirement fund of the Association to pay fully the persons entitled to benefits provided herein, such persons shall be paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be determined by the Trustees; ~~provided, that the assets of such fund determined as of the close of any fiscal year of the Association shall in no event be less than one hundred thirty percent (130%) of the present value of current retirees determined as of the close of that fiscal year.~~ Trustees acting upon the advice of the Association's actuary. Effective on or after July 1, 1998, the Trustees shall obtain a written report from the Association's actuary as of July 1 of each year evenly divisible by two, or more frequently if the Trustees deem advisable, setting forth the present value of the assets of the fund and the present value of current liabilities of current retirees."

SECTION 2. The provisions of this act do not create an additional liability for the Winston-Salem Firemen's Retirement Fund unless sufficient funds are available to pay fully for the liability.

SECTION 3. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

S.B. 1428

Session Law 2006-122

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES, AND TO ALLOW AN ADVISORY REFERENDUM IN THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

...

- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Creswell, Dallas, Dobson, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. The Clayton Town Council may, by resolution, direct the Johnston County Board of Elections to conduct prior to January 1, 2008, an advisory referendum on whether the Town should consider amending the manner by which voters elect Council members. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on a ballot for such a referendum shall be:

"Should the Clayton Town Council consider amending the manner by which voters elect Council members by designating that some members are elected from voting districts to be drawn by the Town Council and other members are elected at large?

[] YES [] NO"

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

S.B. 1666

Session Law 2006-123

AN ACT AUTHORIZING THE TOWN OF SUNSET BEACH TO LEVY SPECIAL ASSESSMENTS TO MEET THE COST OF CONSTRUCTING SEWAGE COLLECTION AND TREATMENT FACILITIES PRIOR TO THE CONSTRUCTION OF THE FACILITIES.

Whereas, the Town of Sunset Beach is without sewage collection and treatment facilities and the health and safety of the Town require their construction; and

Whereas, the Town does not have the funds needed to build the facilities; and

Whereas, the Town has determined that the only way to construct the facilities in a proper and timely manner is to require that property owners meet their special assessment obligations prior to the letting of contracts for the construction; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Town Council of the Town of Sunset Beach may levy special assessments to meet the estimated cost of sewage collection and treatment facilities. The assessment roll shall become effective on a date set by the Council that is at least 30 days following the formal advertising for bids covering the proposed work.

SECTION 2. The Town Council of the Town of Sunset Beach may give owners of assessed property the option of paying the assessment either in cash or in installments, but the period over which the installments are paid shall not exceed one year from the date the assessment roll is confirmed. Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight percent (8%) per annum.

SECTION 3. In the event the execution of a contract (or contracts) covering the proposed work is not forthcoming within one year from the date the assessment roll is confirmed, all assessments for the purpose of meeting the cost of constructing sewage collection and treatment facilities paid to the Town of Sunset Beach shall be returned to each payee within 30 days along with interest at a rate not less than six percent (6%) per annum for the period each assessment payment is held by the Town; however, interest shall be paid on no assessment funds for a period in excess of 90 days.

SECTION 4. All assessment funds received by the Town may be deposited in a special interest-bearing account, and any interest earned and retained by the Town shall be used to offset expenses incurred with regard to the proposed sewage collection and treatment facilities.

SECTION 5. In levying the special assessments, the Town Council shall follow, insofar as practicable, the procedures set forth in Article 10 of Chapter 160A of the General Statutes.

SECTION 6. When the construction of the sewage collection and treatment facilities is complete, the Town Council shall ascertain the total cost as provided in G.S. 160A-226. If the total cost is greater than the estimated cost, the Town Council may levy special assessments to collect the difference on the same basis as the first special assessments were made. The provisions of Section 2 of this act shall apply to the paying of special assessments levied under this section.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

S.B. 1841

Session Law 2006-124

AN ACT AMENDING THE CHARTER OF THE CITY OF CHARLOTTE
CONCERNING THE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4.61 of Article III of Chapter 4 of the Charter of the City of Charlotte, being S.L. 2000-26, as amended, reads as rewritten:

"Section 4.61. **Civil service Board; board; Membership, Powers and Duties.** (a) Establishment. There is hereby continued a ~~civil service~~Civil Service Board for the City of Charlotte, to consist of ~~five members and two alternates; three~~seven members; four members ~~and one alternate~~ to be appointed by the Council and ~~two~~three members and

~~one alternate~~ to be appointed by the Mayor. Each member shall serve for a term of three years. In case of a vacancy on the Board, the Council or the Mayor, as the case may be, shall fill such vacancy for the unexpired term of said member. For the purposes of establishing a quorum of the Board, any combination of Board members and alternates totaling three shall constitute a quorum. All Board members ~~and alternates~~ shall attend regular meetings for the purposes of meeting attendance policy and familiarity with Board business and procedures. ~~Alternates shall attend hearings when needed due to scheduling conflicts of regular Board members and shall vote only when serving in the absence of a regular Board member.~~ Attendance at meetings and continued service on the Board shall be governed by the attendance policies established by the Council. Vacancies resulting from a member's failure to attend the required number of meetings or hearings shall be filled as provided herein."

SECTION 2. An individual appointed by the Council or Mayor prior to January 1, 2007, to serve as an alternate on the Civil Service Board shall automatically become a member of the Civil Service Board for the remainder of the individual's unexpired term as an alternate.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

H.B. 2653

Session Law 2006-125

AN ACT TO ESTABLISH A SEASON FOR THE TRAPPING OF FOXES IN ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, there is an open season for trapping foxes from October 1 through January 31 of each year.

SECTION 2. There are no bag limits or tag requirements for foxes taken during the season established in this act.

SECTION 3. During this season, leghold traps shall have rubber pad jaws, double swivel chains, and identification tags.

SECTION 4. No person shall place traps on the land of another without first obtaining written permission from the landowner or lessee.

SECTION 5. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this act.

SECTION 6. The Wildlife Resources Commission shall study and develop an appropriate season for the trapping of foxes in Alamance County, to be implemented by rule after the expiration of the season established in Sections 1 through 5 of this act.

SECTION 7. Nothing in this act restricts the lawful killing of coyotes.

SECTION 8. This act applies only to Alamance County.

SECTION 9. Sections 1 through 5 of this act become effective October 1, 2006, and expire January 31, 2008. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

H.B. 2688**Session Law 2006-126****AN ACT TO LIMIT THE HEIGHT OF STRUCTURES IN THE TOWN OF KURE BEACH AND THE CITY OF HENDERSONVILLE.**

The General Assembly of North Carolina enacts:

SECTION 1. No building erected within the corporate limits of the Town of Kure Beach may have a height in excess of 35 feet above ground level unless the building was erected before the effective date of this act. Variances of the height limitation shall not be granted.

SECTION 2. The height limitation created by Section 1 of this act does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

SECTION 3.(a) The maximum building height on any building within the corporate limits of the City of Hendersonville shall not exceed 64 feet. For purposes of this section, building height shall mean the vertical distance measured from the average grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. The height limitation created by this subsection does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy. No variance to this subsection may be granted. This subsection does not apply to buildings erected prior to the effective date of this section.

SECTION 3.(b) The Henderson County Board of Elections shall conduct within the City of Hendersonville a referendum on subsection (a) of this section. The election shall be held on November 7, 2006. The form of the question to be presented on the ballot shall be:

"[] FOR [] AGAINST

Height limit of 64 feet for buildings in the City of Hendersonville."

If a majority of those voting in the referendum held pursuant to this act vote in favor of the question, subsection (a) of this section shall remain in effect. If a majority of those voting in the referendum do not vote in favor of the question, subsection (a) of this section is repealed upon certification of the election results.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law on the date it was ratified.

H.B. 350**Session Law 2006-127****AN ACT TO AUTHORIZE MARTIN COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.**

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1991-80 reads as rewritten:

"**Section 1.** Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public~~

~~notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.~~

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable~~

by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

(e) ~~Distribution and use~~Use of tax revenue.Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County ~~Travel and Tourism Development Authority~~. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds~~collected each year and one percent (1%) of the remaining gross receipts collected each year.~~
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

(f) ~~Effective date of levy.~~ A tax levied under this section shall become effective ~~on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

(g) ~~Repeal.~~ A tax levied under this section may be repealed by a resolution adopted by the Martin County Board of Commissioners. ~~Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Martin County ~~Travel and Tourism Development Authority~~. – (a) ~~Appointment and membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and Tourism Development Authority~~, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

- (1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

- (2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.
- (3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.
- (4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.
- (5) Five members, one appointed by each member of the Martin County Board of Commissioners.
- (6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.
- (7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. — Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

- (1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.
- (2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.
- (3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.
- (4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.
- (5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.
- (6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.
- (7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.
- (8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.
- (9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.~~ Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

(f) ~~Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

"Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 882

Session Law 2006-128

AN ACT CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this act. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is

subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 5.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-215(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett ~~County~~County and the Ocracoke Township Taxing District."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 1269

Session Law 2006-129

AN ACT TO AUTHORIZE CHOWAN COUNTY TO LEVY AN ADDITIONAL TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 174 of the 1989 Session Laws reads as rewritten:

"Section 1. Occupancy ~~tax~~.Tax. – (a) ~~Authorization and scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This~~

~~tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) ~~Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.~~

(d) ~~Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

(e) ~~Distribution and use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, ~~not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each~~

year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Chowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. = (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. = The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. = The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 1820**Session Law 2006-130**

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- ...
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Bladenboro, Calabash, Catawba, Columbia, Creswell, Dallas, Fuquay-Varina, Garner, Godwin, Grimesland, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Ranlo, Rolesville, Rutherfordton, Shallotte, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, and Zebulon."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 2402**Session Law 2006-131**

AN ACT AMENDING THE CHARTER OF THE CITY OF DURHAM TO ALLOW FAIR HOUSING ORGANIZATIONS TO FILE COMPLAINTS WITH THE DURHAM HUMAN RELATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 121 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 373 of the 1983 Session Laws, Chapter 715 of the 1985 Session Laws, Chapter 379 of the 1991 Session Laws, and Chapter 658 of the 1993 Session Laws, reads as rewritten:

"Sec. 121. Equal Housing. (a) The City Council may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, familial status, or handicap in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity or procedure related, directly or indirectly to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a misdemeanor, and shall be punishable under G.S. 14-4; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to the General Court of Justice, Superior Court Division, for appropriate legal and equitable remedies, including but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and punitive damages, and the court shall have jurisdiction to grant such remedies.

(b) A fair housing enforcement organization, as defined in regulations adopted under 42 U.S.C. § 3602 (1968), may file a complaint with a committee established or designated by the City Council under Section 123 of this charter on behalf of a person who claims to have been injured by or reasonably believes he or she will be irrevocably injured by an unlawful discriminatory housing practice."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 2591

Session Law 2006-132

AN ACT AUTHORIZING THE BLADEN COUNTY SCHOOLS TO CONVEY PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of G.S. 115C-518, the Board of Education of the Bladen County Schools may convey to Lower Bladen Community Citizens Group, with or without monetary consideration, all of its rights, title, and interest to the Natmore School property, which is also known as the Kelly Community Building.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law on the date it was ratified.

H.B. 448

Session Law 2006-133

AN ACT TO EXEMPT COMMUNITY COLLEGES FROM THE LAW GOVERNING SMOKING RESTRICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-599 reads as rewritten:

"§ 143-599. Exemptions.

All of the following facilities shall be exempt from the provisions of this Article:

- (1) Any primary or secondary school or child care center, except for a teacher's lounge.
- (2) An enclosed elevator.
- (3) Public school bus.
- (4) Hospital, nursing home, rest home, and State facility operated under the authority of G.S. 122C-181.
- (5) Local health department and local department of social services and the building and grounds where the local health department or local department of social services, as applicable, is located. For the purposes of this subdivision, "grounds" means the area located within 50 linear feet of a local health department or a local department of social services.
- (6) Any nonprofit organization or corporation whose primary purpose is to discourage the use of tobacco products by the general public.
- (7) Tobacco manufacturing, processing, and administrative facilities.
- (8) Indoor arenas with a seating capacity greater than 23,000.
- (9) State correctional facilities operated by the Department of Correction.
- (10) Community colleges."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law upon approval of the Governor at 7:29 p.m. on the 19th day of July, 2006.

H.B. 1388

Session Law 2006-134

AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ISSUE PERMITS TO ALIEN DEBT COLLECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-70-5 reads as rewritten:

"§ 58-70-5. Application to Commissioner for permit.

Any person, firm, corporation or association desiring to secure a permit as provided by G.S. 58-70-1, shall make application to the Commissioner of Insurance for each location at which such person, firm, corporation or association desires to carry on the collection agency business as hereinafter defined. Such applicant shall be entitled to a permit upon submission to the Commissioner of Insurance of the following:

- (a) The name, trade name if any, street address, and telephone number of the applicant, including any home office address and telephone number, if different;
- (b) If the applicant is a corporation,
 - (1) A certified copy of the board of director's resolution authorizing the submission of the application;
 - (2) An authenticated copy of the Articles of Incorporation and all amendments thereto;
 - (3) An authenticated copy of the bylaws or other governing instruments;

- (4) If the applicant is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the North Carolina Secretary of State;

(b1) In addition to the information required by subsection (b) of this section, if the applicant is an alien corporation, the corporation must be owned or majority controlled ultimately by a parent entity incorporated or organized under the laws of the United States or any jurisdiction within the United States, and the alien corporation may only service accounts held by an affiliate or subsidiary of the same parent entity. For purposes of this subsection, "control" is defined by G.S. 58-19-5(2). Should the alien corporation be sold to an entity unrelated to the parent entity, notice shall be provided to the Department of the pending sale 30 days in advance of the sale. Provision of Form 8-K, properly filed with the Securities and Exchange Commission, shall be deemed compliance with the notice requirement of this subsection. In the event of a sale, the new parent entity shall provide evidence to the Department within 30 days of the sale of its and the alien corporation's compliance with the requirements of this section. In the event that the new parent entity does not provide the evidence within 30 days after the sale, the alien corporation's permit shall be automatically suspended until the Department is provided the evidence of compliance which is satisfactory to the Commissioner;

(c) If the applicant is a partnership, an authenticated copy of the then current partnership agreement;

(d) If the trade name is used, certificates showing that the trade name has been filed as required by G.S. 66-68;

(e) A surety bond as required by ~~G.S. 58-70-20~~; G.S. 58-70-20. ~~In the case of an alien corporation, the surety bond requirements shall be double the amount set by G.S. 58-70-20;~~

(f) A completed statement by each stockholder owning ten percent (10%) or more of the applicant's outstanding voting stock and each partner, director, and officer actively engaged in the collection agency business, containing: the name of the collection agency, the name and address of the individual completing the form, the positions held by the individual, each conviction of any criminal offense and any criminal charges pending other than minor traffic violations of the individual, and the name and address of three people not related to the individual who can attest to the individual's reputation for honesty and fair dealings;

(g) A statement sworn to by an appropriate corporate officer, partner, or individual proprietor giving a description of the collection method to be employed in North Carolina;

(h) A statement certifying that there are no unsatisfied judgments against the applicant;

(i) A list of all telephone numbers assigned to, or to be used by the applicant in the operation of the collection agency;

(j) The appropriate permit fee as required by G.S. 58-70-35;

(k) A balance sheet as of the last day of the month prior to the date of submission of the application, certified true and correct by a corporate officer, partner, or proprietor, setting forth the current assets, fixed assets, current liabilities and positive net worth of the applicant;

(l) The address of the location at which the applicant will make those records of its collection agency business described in G.S. 58-70-25 available for inspection by the Commissioner of Insurance.

(m) A statement certifying that no officer, individual proprietor or partner of the applicant has been convicted of a felony involving moral turpitude, or any violation of any State or federal debt collection law.

(n) If the collection agency's office or records, as described in G.S. 58-70-25, are located outside of North Carolina, a statement sworn to by an appropriate corporate officer, partner, or individual proprietor consenting to and authorizing the reimbursement, to the Commissioner by the collection agency, of expenses incurred by the Commissioner in conducting routine examinations, audits, and in investigating written complaints against the collection agency or its employees. All reimbursements shall be paid to the Commissioner no more than 30 days after the date of billing. In the case of an alien corporation, the sworn statement must provide that the corporation will make available to the Commissioner for his inspection, in North Carolina, those records described in G.S. 58-70-25, at the expense of the corporation;

(o) If the applicant is a foreign corporation, a statement authorizing the Commissioner to be its agent for service of process, which shall be administered pursuant to the provisions of G.S. 58-16-30.

(p) In the case of an alien corporation, when the corporation is in violation of this Article, the parent entity must agree to cure the violation by the alien corporation.

(q) For purposes of this Article, the following definitions apply:

- (1) "Alien corporation" means a company incorporated or organized under the laws of any jurisdiction outside of the United States.
- (2) "Foreign corporation" means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State."

SECTION 2. G.S. 58-70-40 is amended by adding a new subsection to read:

"(d) In the case of an alien corporation that has been issued a permit under this Article, in an action brought by the Commissioner, service of process upon the parent entity is sufficient service of process on the alien corporation."

SECTION 3. G.S. 58-70-65(c) reads as rewritten:

"(c) Each permit holder located outside this State shall deposit in a separate trust account, designated for its North Carolina creditors, funds to pay all monies due or owing all collection creditors or forwarders located within this State. In the case of alien corporations that are permit holders, the trust account must be established with a bank located in the United States or in any bank approved by the Commissioner."

SECTION 4. This act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:30 p.m. on the 19th day of July, 2006.

H.B. 1399

Session Law 2006-135

AN ACT TO MAKE CHANGES TO THE MOTOR VEHICLE LAWS CONCERNING WEIGHING OF WOOD RESIDUALS AND EXEMPTION FROM REGISTRATION FOR CERTAIN AGRICULTURAL VEHICLES, AND TO AUTHORIZE AGREEMENTS BETWEEN THE DEPARTMENT OF TRANSPORTATION AND LOCAL GOVERNMENTS TO EXPEDITE TRANSPORTATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(15) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

- a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark, bark from any site; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.
- b. Does not operate on an interstate highway, a posted light-traffic road, or a posted bridge.
- c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.
- d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

..."

SECTION 2. G.S. 20-51(6) reads as rewritten:

"(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginced cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, ~~potatoes~~, potatoes, all vegetables, fruits, greenhouse and nursery plants and flowers, Christmas trees, fertilizers or chemicals purchased or owned by the farmer or tenant for personal use in implementing husbandry, irrigation pipes, loaders, or equipment owned by the farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term "transporting" as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith."

SECTION 3. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-66.8 Agreements with units of local government to expedite projects.

(a) Agreements Authorized. – The Department of Transportation may enter into agreements with units of local government for the purpose of expediting transportation projects currently programmed in the Transportation Improvement Plan.

(b) Form of Agreements. – The agreements affected by this section shall be between the Department of Transportation and units of local government. The agreements may authorize units of local government to construct projects scheduled in the Transportation Improvement Plan more than two years from the date of the agreement. The units of local government shall fund one hundred percent (100%) of the project at current prices. In a future year, when the project is funded from State and federal sources, the units of local government shall be reimbursed an appropriate share of the funds, at the future programmed project funding amount, as identified and scheduled in the Transportation Improvement Plan.

(c) Report. – The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, on any agreements executed with units of local government pursuant to this section."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:31 p.m. on the 19th day of July, 2006.

H.B. 1094

Session Law 2006-136

AN ACT TO ESTABLISH A PILOT PROGRAM TO STREAMLINE THE PROCESS FOR THE ISSUANCE OF AN IMPROVEMENT PERMIT OR AN AUTHORIZATION TO CONSTRUCT FOR AN ON-SITE SUBSURFACE WASTEWATER SYSTEM IN CERTAIN COUNTIES BY AUTHORIZING LOCAL HEALTH DEPARTMENTS, AUTHORIZED AGENTS OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND LICENSED SOIL SCIENTISTS TO COMPLETE SOIL AND SITE EVALUATIONS IN THE PARTICIPATING COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The definitions in G.S. 130A-334 apply throughout this act. For the purposes of this act, "Commission" means the Commission for Health Services. "Licensed soil scientist" has the same meaning as in G.S. 89F-3(3).

SECTION 2.(a) The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 August 2006 and to terminate 1 July 2011 regarding the process for the issuance of an improvement permit for an on-site wastewater system pursuant to Article 11 of Chapter 130A of the General Statutes. A county that meets all of the following criteria may participate in the pilot program:

- (1) The population of the county must not exceed 25,000 according to the most recent federal decennial census.
- (2) The county must have more than 900 applications for improvement permits or authorizations to construct that are pending before the local health department on the effective date of this act.
- (3) The board of county commissioners and the local board of health for the county must both approve a resolution requesting to participate in the pilot program.

SECTION 2.(b) Notwithstanding G.S. 130A-336, the Department of Environment and Natural Resources shall authorize licensed soil scientists and the local health department to evaluate any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system. The local health department shall issue an improvement permit after one of the following has occurred:

- (1) A soil and site evaluation has been completed by an authorized agent of the Department or local health department that finds that the site is suitable for a wastewater system.

- (2) The local health department receives a completed soil and site evaluation for a wastewater system designed to treat 3,000 gallons per day or less of sewage that has been signed and sealed by a licensed soil scientist that finds that the site is suitable for a wastewater system.

SECTION 2.(c) A licensed soil scientist who submits a completed soil and site evaluation pursuant to this section shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars (\$1,000,000) per claim and that shall remain in force for at least six years after the date on which the improvement permit is approved. The licensed soil scientist shall provide the local health department with evidence satisfactory to the local health department that the coverage required by this section is in force. The local health department shall maintain a register of all licensed soil scientists who work in the county that have submitted completed soil and site evaluations under this section.

SECTION 2.(d) An improvement permit issued pursuant to this section shall include:

- (1) For permits that are valid for five years, a site plan drawn to scale with setbacks labeled. No permits shall be issued that are valid without expiration.
- (2) A description of the facility the proposed site is to serve and any factors that would affect the wastewater load.
- (3) The type and layout of the proposed wastewater system and its location.
- (4) The design wastewater flow and characteristics.
- (5) Any proposed landscape, site, drainage, or soil modifications.
- (6) A detailed soil profile description of at least two locations within the proposed disposal area. The detailed soil profile descriptions shall include soil taxonomic classifications, horizons, depth, texture, structure, soil wetness conditions, restrictive horizons, matrix color, and redoximorphic colors.
- (7) Any other information required by the rules of the Commission.

SECTION 2.(e) An improvement permit issued pursuant to this section shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

SECTION 2.(f) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to the Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement

permit and an authorization for wastewater system construction have been obtained from the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department of Environment and Natural Resources and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

SECTION 2.(g) When a local health department issues an improvement permit or authorization to construct based upon work performed by a licensed soil scientist pursuant to this section, the improvement permit or authorization to construct shall bear a statement that reads: "The soil, site, and system evaluation and documentation necessary to issue this _____ (improvement permit or authorization to construct) was performed by _____ (name of licensed soil scientist), a licensed soil scientist, license number _____ (license number).".

SECTION 2.(h) When a local health department denies an application for an improvement permit or authorization to construct prepared by a licensed soil scientist pursuant to this section, the denial shall include a written report that specifically identifies the provisions of Article 11 of Chapter 130A of the General Statutes or rules adopted pursuant to the Article on which the denial is based.

SECTION 2.(i) A local health department may employ or contract with a licensed soil scientist for the review of an application for an improvement permit or authorization to construct. A licensed soil scientist who reviews a completed application for an improvement permit or authorization to construct under this subsection shall have in force errors and omissions coverage or other appropriate liability insurance that has policy limits of not less than one million dollars (\$1,000,000) per claim.

SECTION 2.(j) The Department of Environment and Natural Resources shall: (i) specify uniform procedures for the review of an application prepared by a licensed soil scientist; (ii) establish documentation that must be included in the application; (iii) establish the necessary documentation that must be included in the local health department's written permit application review report; and (iv) specify the rights and obligations of each party.

SECTION 2.(k) In addition to any fees authorized under G.S. 130A-39(g), a local board of health may impose an additional fee not to exceed two hundred dollars (\$200.00) for the costs of review and consideration of applications for an improvement permit or an authorization to construct that has been prepared by a licensed soil scientist pursuant to this section.

SECTION 2.(l) Except as provided in this section, the provisions of Article 11 of Chapter 130A of the General Statutes and rules adopted pursuant to that Article apply to this section. This section applies only to the counties eligible to participate in the pilot program.

SECTION 3. In order to determine the effectiveness of the pilot program, the Department of Environment and Natural Resources shall evaluate whether: (i) the program resulted in a reduction in the length of time improvement permits or authorizations to construct are pending in the participating counties; (ii) the program resulted in increased system failures or other adverse impacts; and (iii) the program resulted in new or increased environmental impacts. The Department shall annually report its interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission beginning 1 October 2007. The Department shall report its final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 October 2011.

SECTION 4. Sections 1 and 2 of this act become effective when it becomes law and expire 1 July 2011. Sections 3 and 4 of this act become effective when it becomes law and expire 1 October 2011.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:32 p.m. on the 19th day of July, 2006.

S.B. 700

Session Law 2006-137

AN ACT DIRECTING LOCAL BOARDS OF EDUCATION, CHARTER SCHOOLS, THE NORTH CAROLINA SCHOOL OF THE ARTS, AND THE NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS TO REQUIRE THE DISPLAY OF THE UNITED STATES AND NORTH CAROLINA FLAGS AND TO REQUIRE THAT RECITATION OF THE PLEDGE OF ALLEGIANCE IS SCHEDULED ON A DAILY BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-47(29a) reads as rewritten:

"§ 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:

...

(29a) To ~~Encourage~~Require the Display of the United States and North Carolina Flags, and to ~~Encourage~~Require the Recitation of the Pledge ~~or Oath~~ of Allegiance. – Local boards of education ~~are encouraged to~~ shall adopt policies to (i) ~~provide for~~ require the display of the United States and North Carolina flags in each classroom, when available, (ii) ~~provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis,~~require that recitation of the Pledge of Allegiance be scheduled on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

SECTION 2. G.S. 115C-238.29F is amended by adding a new subsection to read:

"(k) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. – A charter school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

SECTION 3. Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-69.1. Display of the United States and North Carolina flags and the recitation of the Pledge of Allegiance.

The school shall (i) display the United States and North Carolina flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on a daily basis, and (iii) provide instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. The school shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

SECTION 5. G.S. 116-235 is amended by adding a new subsection to read:

"(i) The Display of the United States and North Carolina Flags and the Recitation of the Pledge of Allegiance. – The Board of Trustees shall adopt policies to require (i) the display of the United States and North Carolina flags in each classroom when available, (ii) the recitation of the Pledge of Allegiance on a daily basis, and (iii) the instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law upon approval of the Governor at 7:33 p.m. on the 19th day of July, 2006.

H.B. 2127

Session Law 2006-138

AN ACT TO AUTHORIZE THE ADDITION OF MOUNTAIN BOG STATE NATURAL AREA AND SANDY RUN SAVANNAS STATE NATURAL AREA TO THE STATE PARKS SYSTEM, AND TO DIRECT THE DIVISION OF PARKS AND RECREATION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE FEASIBILITY AND DESIRABILITY OF ESTABLISHING A STATE PARK AT CABIN LAKE.

Whereas, Section 5 of Article XIV of the North Carolina Constitution states that it shall be a proper function of the State of North Carolina to acquire and preserve park, recreational, and scenic areas and, in every other appropriate way, to preserve as a part of the common heritage of this State its open lands and places of beauty; and

Whereas, the General Assembly enacted the State Parks Act in 1987, declaring that the State of North Carolina offers unique archaeological, geological, biological, scenic, and recreational resources, and that such resources are part of the heritage of the people of the State to be preserved and managed by those people for their use and for the use of their visitors and descendants; and

Whereas, mountain bogs are wetlands that support a variety of rare and unique species. Because of their location on small flat sites in the mountains, bogs are highly vulnerable to damage from clearing, grading, and development. Very few of North Carolina's mountain bogs remain intact, and they are one of the State's most endangered habitats; and

Whereas, Mountain Bog State Natural Area would be comprised of two mountain bogs, Sugar Mountain Bog and Pineola Bog; and

Whereas, rare species found at one or both of the bogs include the bog turtle, bog rose, bog fern, cranberry, gray's lily, large purple-fringed orchid, purple-leaf willowherb, four-toed salamander, and Baltimore checkerspot; and

Whereas, the Mountain Bog site has been found to possess biological resources of statewide significance; and

Whereas, savannas are renowned for extraordinary plant diversity and high numbers of rare species. Savannas are an important component of the State's natural landscape, but are poorly represented in the existing State Parks System; and

Whereas, the Sandy Run Savannas State Natural Area would be comprised of a cluster of nationally significant savannas along the border of Pender and Onslow Counties; and

Whereas, the Sandy Run Savannas site is important as a military buffer and is strategically located as a hub surrounded by Camp Lejeune, Holly Shelter Game Land, and Angola Bay Game Land; and

Whereas, the Sandy Run Savannas site contains rare species that include Venus flytrap, golden sedge, red-cockaded woodpecker, Cooley's meadowrue, yellow fringeless orchid, Carolina goldenrod, and rough-leaf loosestrife; and

Whereas, the Sandy Run Savannas site has been found to possess biological resources of statewide significance; and

Whereas, Cabin Lake possesses significant scenic and recreational resources; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Mountain Bog State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 2. The General Assembly authorizes the Department of Environment and Natural Resources to add Sandy Run Savannas State Natural Area to the State Parks System as provided in G.S. 113-44.14(b).

SECTION 3. The Division of Parks and Recreation of the Department of Environment and Natural Resources shall study the feasibility and the desirability of acquiring land and establishing a State Park at Cabin Lake. The study shall include estimates of the cost of developing the proposed park. The Division shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 15 January 2007.

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:34 p.m. on the 19th day of July, 2006.

S.B. 1156

Session Law 2006-139

AN ACT TO ESTABLISH THE NORTH CAROLINA DAIRY STABILIZATION AND GROWTH FUND TO PROVIDE CRITICAL SUPPORT FOR THE NORTH CAROLINA DAIRY INDUSTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 68A.

"North Carolina Dairy Stabilization and Growth Program.

"§ 106-812. Findings.

(a) The General Assembly finds that North Carolina has suffered a significant loss of its traditional industrial and agricultural economic base. The State's dairy industry is at serious risk of total collapse unless milk prices reach levels sufficient to allow dairy farmers to meet production costs. At the same time, North Carolina is experiencing rapid population growth and urbanization. This growth and urbanization have fueled a rapid loss of prime agricultural land and green space, resulting in a decline in the quality of life for which the State is known.

(b) The General Assembly finds that the dairy industry in North Carolina makes a substantial economic, environmental, and quality-of-life contribution to the well-being of the citizens of the State. The dairy industry, including both producers and processors, currently contributes over six hundred million dollars (\$600,000,000) and 3,000 jobs to the State's economy. Properly managed dairy farms help maintain green space, keep prime agricultural land under production, maintain water quality, enhance food security, and provide a local supply of fresh milk at a reasonable cost to the consumer and to processors in the State. An adequate local milk supply has become increasingly important as transportation costs escalate, making the importation of milk from out-of-state increasingly expensive. The General Assembly finds, however, that despite its importance to the State's economic and environmental well-being, North Carolina's dairy industry is under severe economic pressure, and milk production is declining at an alarming rate. According to United States Department of Agriculture statistics, since 1985 the State has lost sixty-seven percent (67%) of its dairy farms and thirty-five percent (35%) of its processing facilities. North Carolina dairy farms no longer produce sufficient milk for North Carolina's processing facilities to operate. Milk must be imported 10 out of 12 months each year to keep these processing facilities functioning. Further, farm prices for milk exhibit great volatility, creating financial risk and discouraging investment. The General Assembly finds that it is essential to a viable North Carolina dairy industry to have locally produced milk available to processors in the State. The General Assembly further finds that it is essential to the well-being of the citizens of the State to have a local supply of fresh milk available at reasonable cost and not subject to the vagaries of transportation costs and production conditions in other regions of the country.

(c) The General Assembly finds that one of the primary reasons for the decline in milk production in the State is the gap between the price paid to farmers for milk under the federal milk programs and the actual cost of production. Inability to meet production costs combined with increasing land prices have led many milk producers to sell their farms for development and retire or turn to other employment. The General Assembly finds that the most effective means to ensure the continuation of a viable dairy industry in this State is to establish a price floor for milk to enable dairy farmers to meet their production costs. It is the intent of the General Assembly to establish a price support program that will stabilize and reverse the decline in the local milk supply and in the dairy industry in the State and encourage new producers to enter the dairy industry. Sustaining and growing North Carolina's dairy industry will advance the State's goals of preserving and enhancing its economic base and improving the quality of life in the

State through maintaining green space and water quality and assuring an adequate local supply of fresh milk.

"§ 106-813. North Carolina Dairy Stabilization and Growth Fund.

(a) The North Carolina Dairy Stabilization and Growth Fund is created as a nonreverting account in the Department of Agriculture and Consumer Services. The Fund shall consist of any money appropriated to the Fund by the General Assembly and money made available to it from grants, donations, and other sources. The Board of Agriculture shall actively seek donations, grants, and other sources of money for the Fund.

(b) The Board shall use the monies in the Fund as follows:

- (1) Up to two percent (2%) of the money appropriated annually by the General Assembly may be used by the Department for the costs of administering the Dairy Stabilization and Growth Program. In the event that the General Assembly does not make an appropriation to the Fund in a given year, up to two percent (2%) of the balance remaining in the Fund may be used by the Department for the costs of administering the Program.
- (2) The monies remaining after administrative expenses are deducted shall be used to provide assistance to North Carolina dairy farmers in accordance with the provisions of G.S. 106-814.
- (3) At the end of any fiscal year in which the total payments to North Carolina dairy farmers under G.S. 106-814 are less than fifty percent (50%) of the amount appropriated by the General Assembly for the year, five percent (5%) of the unspent appropriation for the year may be set aside for use in that year and subsequent years for programs to support the development of the dairy industry.

"§ 106-814. Dairy Stabilization and Growth Program.

(a) On 1 July of each year the Board of Agriculture shall set a milk support baseline price. The baseline price per hundredweight of milk shall be the average United States Department of Agriculture Federal Milk Market Order Class I price mover for the previous 10 years less fifty cents (50¢).

(b) The Board shall adopt rules implementing the provisions of this Article. The rules shall include criteria for eligibility for distributions from the Fund, procedures for applications for distributions from the Fund, the method by which the amount of a payment to a producer shall be calculated, and the manner of payment to producers.

(c) Each month the Board shall determine whether the monthly announced United States Department of Agriculture Federal Milk Market Order Class I price mover has dropped below the baseline price set for the year. If the monthly announced Class I price mover is lower than the baseline price, then each producer who meets the requirements of subsection (f) of this section shall become eligible for a distribution from the Fund in an amount equal to the difference between the baseline price and the monthly announced Class I price mover multiplied by the hundredweight of milk sold by the producer for the month.

(d) Under exceptional circumstances, and in the discretion of the Board, the amount of any monthly distribution as calculated by the formula set forth in subsection (c) of this section may be increased by an amount not to exceed one dollar (\$1.00) per hundredweight of milk sold in that month.

(e) Distributions shall be made to eligible producers at least quarterly, unless in the judgment of the Board the payment amounts are trivial. All payments under the Program are subject to the availability of funds.

(f) To be eligible to receive assistance from the Dairy Stabilization and Growth Fund, a dairy farmer shall demonstrate to the satisfaction of the Board that they are in compliance with the following rules and regulations:

- (1) For Grade A milk producers, the federal Grade A milk regulations.
- (2) For non-Grade A producers, Article 26 of Chapter 106 of the General Statutes and the rules implementing that Article.

(g) Farmers who fail to demonstrate compliance with applicable rules and regulations shall become ineligible for assistance from the Fund until compliance is attained."

SECTION 2. The Commissioner of Agriculture shall file a report no later than 31 March of each year with the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, the Chair of the House of Representatives Agriculture Committee, and the Chair of the Senate Committee on Agriculture, Environment, and Natural Resources which shall include the following:

- (1) The short- and long-term problems associated with maintaining a viable dairy industry in the State.
- (2) Ways to sustain the existing dairy industry in the State.
- (3) Opportunities to expand the dairy industry, including attracting both new dairy producers and new processors to the State.
- (4) The contribution of dairy farms to the maintenance of prime agricultural land and the quality of life in the State.
- (5) An analysis of the effectiveness of the Dairy Stabilization and Growth Program in achieving the goals of maintaining a local supply of fresh milk for processing and consumption, facilitating the entry of young farmers into the dairy industry, and preserving green space along the urban fringe.
- (6) Other factors that impact the dairy industry in the State.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:35 p.m. on the 19th day of July, 2006.

S.B. 774

Session Law 2006-140

AN ACT TO MODIFY THE SEAT BELT USE STATUTES TO ENHANCE THE USE OF SEAT BELTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-135.2A reads as rewritten:

"§ 20-135.2A. Seat belt use mandatory.

(a) ~~Each front seat occupant who is 16 years of age or older and each driver of a passenger~~ Except as otherwise provided in G.S. 20-137.1, each occupant of a motor vehicle manufactured with seat belts shall have a seat belt properly fastened about his or

her body at all times when the vehicle is in forward motion on a street or highway in this State.

(b) ~~"Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.~~

(c) This section shall not apply to any of the following:

- (1) A driver or occupant of a noncommercial motor vehicle with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;
- (2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;
- (3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;
- (4) Any vehicle registered and licensed as a property carrying vehicle in accordance with G.S. 20-88 while being used for agricultural ~~or commercial purposes;~~ purposes in intrastate commerce;
- (5) A motor vehicle not required to be equipped with seat safety belts under federal law; ~~or~~
- (6) Any occupant of a motor home, as defined in G.S. 20-4.01(27)d2, other than the driver and front seat passengers.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section or as justification for the stop of a vehicle or detention of a vehicle operator and passengers.

(d1) Failure of a rear seat occupant of a vehicle to wear a seat belt shall not be justification for the stop of a vehicle.

(e) Any driver or front seat 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). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of ten dollars (\$10.00) and no court costs. 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.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of ~~the Division of~~ Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) Repealed by Session Laws 1999-183, s. 3, effective October 1, 1999."

SECTION 2. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date. Law enforcement agencies shall issue only warnings for violations of this act with regards to backseat passengers in motor vehicles

from December 1, 2006, to June 30, 2007. On July 1, 2007, law enforcement agencies may begin issuing citations, or taking other enforcement action, for violations of this act with regards to backseat passengers. Front seat passengers not in compliance with this act may continue to be issued citations to ensure compliance with this section.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:36 p.m. on the 19th day of July, 2006.

H.B. 2651**Session Law 2006-141**

AN ACT TO PROVIDE FOR ROTH 401K CONTRIBUTIONS FOR LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-166.30(h) reads as rewritten:

"(h) Notwithstanding any other provisions of law, any pending or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of their transfer to the State Retirement System on January 1, 1985, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, shall in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Teachers' and State Employees' Retirement System."

SECTION 2. G.S. 143-166.50(c) reads as rewritten:

"(c) Rights. – Notwithstanding any other provisions of law, any accrued or inchoate rights of a member of the Law-Enforcement Officers' Retirement System as of his transfer to the Local Governmental Employees' Retirement System on January 1, 1986, including the rights to a vested deferred retirement allowance and to commence retirement at certain ages with required years of service as a law-enforcement officer, may in no way be diminished; provided, however, in no event may a member commence retirement and continue membership service with the same Retirement System after January 1, 1986.

No eligible officer shall be precluded from exercising that officer's pending or inchoate rights under this section, should the officer elect to make Roth after-tax contributions to the Supplemental Retirement Income Plan, except that these Roth after-tax contributions and the earnings thereon shall not be subsequently transferred to the Local Governmental Employees' Retirement System."

SECTION 3. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:37 p.m. on the 19th day of July, 2006.

H.B. 2077

Session Law 2006-142

AN ACT TO MAKE CHANGES WITH RESPECT TO THE IMPLEMENTATION OF MENTAL HEALTH REFORM.

*The General Assembly of North Carolina enacts:***SECTION 1.** G.S. 122C-142(a) reads as rewritten:**"§ 122C-142. Contract for services.**

(a) When the area authority contracts with persons for the provision of services, ~~the area authority it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility.~~ Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met."

SECTION 2.(a) G.S. 122C-102 reads as rewritten:**"§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.~~Services; system performance measures.~~**

(a) Purpose of State Plan. – The Department shall develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The purpose of the State Plan is to provide a strategic template regarding how State and local resources shall be organized and used to provide services. The State Plan shall be issued every three years beginning July 1, 2007. It shall identify specific goals to be achieved by the Department, area authorities, and county programs over a three-year period of time and benchmarks for determining whether progress is being made towards those goals. It shall also identify data that will be used to measure progress towards the specified goals. In order to increase the ability of the State, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, the Department shall not adopt or implement policies that are inconsistent with the State Plan without first consulting with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Content of State Plan. – The State Plan shall include the following:

- (1) Vision and mission of the State Mental Health, Developmental Disabilities, and Substance Abuse Services system.
- (2) ~~Organizational structure of the Department and the divisions of the Department responsible for managing and monitoring mental health, developmental disabilities, and substance abuse services.~~
- (3) Protection of client rights and consumer involvement in planning and management of system services.
- (4) Provision of services to targeted populations, including criteria for identifying targeted populations.
- (5) Compliance with federal mandates in establishing service priorities in mental health, developmental disabilities, and substance abuse.

- (6) Description of the core services that are available to all individuals in order to improve consumer access to mental health, developmental disabilities, and substance abuse services at the local level.
- (7) Service standards for the mental health, developmental disabilities, and substance abuse services system.
- (8) Implementation of the uniform portal process.
- (9) Strategies and schedules for implementing the service plan, including consultation on Medicaid policy with area and county programs, qualified providers, and others as designated by the Secretary, intersystem collaboration, promotion of best practices, technical assistance, outcome-based monitoring, and evaluation.
- (10) A plan for coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the Medicaid State Plan, and NC Health Choice.
- (11) A business plan to demonstrate efficient and effective resource management of the mental health, developmental disabilities, and substance abuse services system, including strategies for accountability for non-Medicaid and Medicaid services.
- (12) Strategies and schedules for implementing a phased in plan to eliminate disparities in the allocation of State funding across county programs and area authorities by January 1, 2007, including methods to identify service gaps and to ensure equitable use of State funds to fill those gaps among all counties.

(c) State Performance Measures. – The State Plan shall also include a mechanism for measuring the State's progress towards increased performance on the following matters: access to services, consumer-focused outcomes, individualized planning and supports, promotion of best practices, quality management systems, system efficiency and effectiveness, and prevention and early intervention. Beginning October 1, 2006, and every six months thereafter, the Secretary shall report to the General Assembly and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, on the State's progress in these performance areas."

SECTION 2.(b) The North Carolina Department of Health and Human Services (DHHS) shall review all State Plans for Mental Health, Developmental Disabilities, and Substance Abuse Services, implemented after July 1, 2001, and before the effective date of this act and produce a single document that contains a cumulative statement of all still applicable provisions of those Plans. This cumulative document shall constitute the State Plan until July 1, 2007.

DHHS and the Secretary shall also identify those provisions in G.S. 122C-112.1, prior State Plans, and directives or communications by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services that must be adopted as administrative rules in order to be enforceable and undertake to adopt those rules.

SECTION 3.(a) G.S. 122C-117(c) reads as rewritten:

"(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide the quarterly report of the area authority to the county finance officer. to each member of the board of county commissioners the quarterly report of the area authority. The county finance officer shall provide the quarterly report to the board of county commissioners at the next

regularly scheduled meeting of the board. The clerk of the board of commissioners shall notify the area director and the county finance officer if the quarterly report required by this subsection has not been submitted within the required period of time. This information shall be presented in a format prescribed by the county. At least twice a year, this information shall be presented in person and shall be read into the minutes of the meeting at which it is presented. In addition, the area director or finance officer of the area authority shall provide to the board of county commissioners ad hoc reports as requested by the board of county commissioners."

SECTION 3.(b) Article 23 of Chapter 153A of the General Statutes is amended by adding the following new section to read:

"§ 153A-453. Quarterly reports by Mental Health, Developmental Disabilities, and Substance Abuse Services area authority or county program.

Quarterly reports by the area director and finance officer of Mental Health, Developmental Disabilities, and Substance Abuse Services area authorities or county programs shall be submitted to the county finance officer as provided under G.S. 122C-117(c)."

SECTION 4.(a) G.S. 122C-3 reads as rewritten:

"§ 122C-3. Definitions.

~~As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:~~The following definitions apply in this Chapter:

...

(20b) "Local management entity" or "LME" means an area authority, county program, or consolidated human services agency. It is a collective term that refers to functional responsibilities rather than governance structure.

..."

SECTION 4.(b) G.S. 122C-111 reads as rewritten:

"§ 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director or program director shall (i) manage the public mental health, developmental disabilities, and substance abuse system for administer the programs of the area authority or county program, as applicable, program according to the local business plan, and (ii) enforce applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area and county program directors and State facility directors shall provide for the coordination of public services between area authorities, county programs, and State facilities. The area authority or county program shall monitor the provision of mental health, developmental ~~disability,~~disabilities, and substance abuse services for compliance with the law, which monitoring and management shall not supersede or duplicate the regulatory authority or functions of agencies of the Department."

SECTION 4.(c) G.S. 122C-115.2(a) reads as rewritten:

"§ 122C-115.2. ~~Business~~ LME business plan required; content, process, certification.

(a) Every county, through an area authority or county program, shall provide for the development, review, and approval of a-an LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. ~~A-An LME business plan shall provide detailed information on- regarding how the area authority or county program will meet State standards, laws, and rules for ensuring~~

quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. The business plan shall be in effect for at least three State fiscal years."

SECTION 4.(d) Article 4 of Chapter 122C is amended by adding a new section to read:

"§ 122C-115.4. Functions of local management entities.

(a) Local management entities are responsible for the management and oversight of the public system of mental health, developmental disabilities, and substance abuse services at the community level. An LME shall plan, develop, implement, and monitor services within a specified geographic area to ensure expected outcomes for consumers within available resources.

(b) The primary functions of an LME include all of the following:

- (1) Access for all citizens to the core services described in G.S. 122C-2. In particular, this shall include the implementation of a 24-hour a day, seven-day a week screening, triage, and referral process and a uniform portal of entry into care.
- (2) Provider endorsement, monitoring, technical assistance, capacity development, and quality control. An LME may remove a provider's endorsement if a provider fails to meet defined quality criteria or fails to provide required data to the LME.
- (3) Utilization management, utilization review, and determination of the appropriate level and intensity of services including the review and approval of the person centered plans for consumers who receive State-funded services. Concurrent review of person centered plans for all consumers in the LME's catchment area who receive Medicaid funded services.
- (4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.
- (5) Care coordination and quality management. This function includes the direct monitoring of the effectiveness of person centered plans. It also includes the initiation of and participation in the development of required modifications to the plans for high risk and high cost consumers in order to achieve better client outcomes or equivalent outcomes in a more cost-effective manner. Monitoring effectiveness includes reviewing client outcomes data supplied by the provider, direct contact with consumers, and review of consumer charts.
- (6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.
- (7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

(c) Subject to all applicable State and federal laws and rules established by the Secretary, an area authority, or county program or consolidated human services agency may contract with a public or private entity for the implementation of LME functions articulated under subsection (b) of this section.

(d) Except as provided in G.S. 122C-142.1 and G.S. 122C-125, the Secretary may not remove from an LME any function enumerated under subsection (b) of this section unless all of the following applies:

- (1) The LME fails during the previous three months to achieve a satisfactory outcome on any of the critical performance measures developed by the Secretary under G.S. 122C-112.1(33).
- (2) The Secretary provides focused technical assistance to the LME in the implementation of the function. The assistance shall continue for at least six months or until the LME achieves a satisfactory outcome on the performance measure, whichever occurs first.
- (3) If, after six months of receiving technical assistance from the Secretary, the LME still fails to achieve or maintain a satisfactory outcome on the critical performance measure, the Secretary shall enter into a contract with another LME or agency to implement the function on behalf of the LME from which the function has been removed.

(e) Notwithstanding subsection (d) of this section, in the case of serious financial mismanagement or serious regulatory noncompliance, the Secretary may temporarily remove an LME function after consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(f) The Commission shall adopt rules regarding the following matters:

- (1) The definition of a high risk consumer. Until such time as the Commission adopts a rule under this subdivision, a high risk consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous 12 months.
- (2) The definition of a high cost consumer. Until such time as the Commission adopts a rule under this subdivision, a high cost consumer means a person whose treatment plan is expected to incur costs in the top twenty percent (20%) of expenditures for all consumers in a disability group.
- (3) The notice and procedural requirements for removing one or more LME functions under subsection (d) of this section."

SECTION 4.(e) G.S. 122C-118.1(a) reads as rewritten:

"§ 122C-118.1. Structure of area board.

(a) An area board shall have no fewer than 11 and no more than 25 members. However, the area board for a multicounty area authority consisting of eight or more counties and serving a catchment area with a population of more than 500,000 may have up to 30 members. In a single-county area authority, the members shall be appointed by the board of county commissioners. Except as otherwise provided, in areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. The boards of county commissioners within the multicounty area shall have the option to appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation,—equitable representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board shall include

~~an individual~~ two individuals with financial ~~expertise~~ or a ~~county finance officer,~~ expertise, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

(b) ~~At least~~ Not more than fifty percent (50%) of the members of the area board shall represent the following:

- (1) A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry.
- (2) A clinical professional from the fields of mental health, developmental disabilities, or substance abuse.
- (3) ~~A~~ At least one family member or ~~an individual from a citizens' organizations~~ organization composed primarily of consumers or their family members, representing the interests of individuals:
 - a. With mental illness; ~~and~~
 - b. In recovery from addiction; ~~and~~ or
 - c. With developmental disabilities.
- (4) ~~Openly~~ At least one openly declared consumers; consumer:
 - a. With mental illness; ~~and~~
 - b. With developmental ~~disabilities; and~~ disabilities; or
 - c. In recovery from addiction.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently no more than one category ~~two categories~~ of membership if the member has the qualifications or attributes of ~~more than one category~~ the two categories of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for ~~four~~ three years, except that upon the initial formation of an area board ~~one-fourth one-third~~ shall be appointed for one year, ~~one-fourth one-third~~ for two years, ~~one-fourth for three years~~, and all remaining members for ~~four~~ three years. Members ~~other than county commissioners~~ shall not be appointed for more than two consecutive terms. Board members serving as of July 1, 2006, may remain on the board for one additional term.

(e) Upon request, the board shall provide information pertaining to the membership of the board that is a public record under Chapter 132 of the General Statutes."

SECTION 4.(f) G.S. 122C-115.1(g) reads as rewritten:

"(g) In a single-county program, an advisory committee shall be appointed by the board of county commissioners and shall report to the county manager. The appointments shall take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. ~~At least fifty percent (50%) of the~~ The membership shall conform to the requirements in ~~G.S. 122C-118.1(b)(1)-(4).~~ G.S. 122C-118.1. In a multicounty program, the advisory committee shall be appointed in accordance with the terms of the interlocal agreement."

SECTION 4.(g) G.S. 122C-115.1(a) reads as rewritten:

"§ 122C-115.1. County governance and operation of mental health, developmental disabilities, and substance abuse services program.

(a) A county may operate a county program for mental health, developmental disabilities, and substance abuse services as a single county or, pursuant to Article 20 of Chapter 160A of the General Statutes, may enter into an interlocal agreement with one or more other counties for the operation of a multicounty program. An interlocal agreement shall provide for the following:

- (1) Adoption and administration of the program budget in accordance with Chapter 159 of the General Statutes.
- (2) Appointment of a program director to carry out the provisions of G.S. 122C-111 and duties and responsibilities delegated by the county. Except when specifically waived by the Secretary, the program director shall meet the following minimum qualifications:
 - a. Masters degree,
 - b. Related experience, and
 - c. Management experience.
- (3) A targeted minimum population of 200,000 or a targeted minimum number of five counties served by the program.
- (4) Compliance with the provisions of this Chapter and the rules of the Commission and the Secretary.
- (5) Written notification to the Secretary prior to the termination of the interlocal agreement.
- (6) Appointment of an advisory committee. The interlocal agreement shall designate a county manager to whom the advisory committee shall report. The interlocal agreement shall also designate the appointing authorities. The appointing authorities shall make appointments that take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. ~~At least fifty percent (50%) of the~~The membership shall conform to the requirements provided in ~~G.S. 122C-118.1(b)(1)-(4).~~G.S. 122C-118.1."

SECTION 4.(h) Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-120.1. Job classifications; director and finance officer.

(a) The Office of State Personnel shall develop a job classification for director of an area authority or county program that reflects the skills required of an individual operating a local management entity. The Office of State Personnel shall also review the job classifications for area authority and county program finance officers to determine whether they reflect the skills necessary to manage the finances of a local management entity. The Commission shall adopt a job classification for director and any new or revised job classifications for finance officers no later than December 31, 2006.

(b) The job classifications developed under subsection (a) of this section shall apply to persons newly hired on or after January 1, 2007."

SECTION 4.(i) Effective January 1, 2007, G.S. 122C-115.1(a), as amended by Section 4(g) of this act, reads as rewritten:

"§ 122C-115.1. County governance and operation of mental health, developmental disabilities, and substance abuse services program.

(a) A county may operate a county program for mental health, developmental disabilities, and substance abuse services as a single county or, pursuant to Article 20 of Chapter 160A of the General Statutes, may enter into an interlocal agreement with one or more other counties for the operation of a multicounty program. An interlocal agreement shall provide for the following:

- (1) Adoption and administration of the program budget in accordance with Chapter 159 of the General Statutes.
- (2) Appointment of a program director to carry out the provisions of G.S. 122C-111 and duties and responsibilities delegated by the county. Except when specifically waived by the Secretary, the program director shall meet all the following minimum qualifications:
 - a. ~~Masters degree; degree.~~
 - b. ~~Related experience; and experience.~~
 - c. Management experience.
 - d. Any other qualifications required under G.S. 122C-120.1.
- (3) A targeted minimum population of 200,000 or a targeted minimum number of five counties served by the program.
- (4) Compliance with the provisions of this Chapter and the rules of the Commission and the Secretary.
- (5) Written notification to the Secretary prior to the termination of the interlocal agreement.
- (6) Appointment of an advisory committee. The interlocal agreement shall designate a county manager to whom the advisory committee shall report. The interlocal agreement shall also designate the appointing authorities. The appointing authorities shall make appointments that take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements provided in G.S. 122C-118.1."

SECTION 4.(j) Effective January 1, 2007, G.S. 122C-115.1(f) reads as rewritten:

"(f) In a single-county program, the program director shall be appointed by the county manager. In a multicounty program, the program director shall be appointed in accordance with the terms of the interlocal agreement.

Except when specifically waived by the Secretary, the program director in a single county program shall meet all the following minimum qualifications:

- (1) Masters degree.
- (2) Related experience.
- (3) Management experience.
- (4) Any other qualifications required under G.S. 122C-120.1."

SECTION 4.(k) Effective January 1, 2007, G.S. 122C-121(d) reads as rewritten:

"(d) Except when specifically waived by the Secretary, the area director shall meet all the following minimum qualifications:

- (1) ~~Masters degree; degree.~~
- (2) ~~Related experience; and experience.~~
- (3) Management experience.
- (4) Any other qualifications required under G.S. 122C-120.1."

SECTION 4.(l) G.S. 122C-141 is amended by adding two new subsections to read:

"(d) If two or more counties enter into an interlocal agreement under Article 20 of Chapter 160A of the General Statutes to be a public provider of mental health, developmental disabilities, or substance abuse services ("public provider"), before an LME may enter into a contract with the public provider, all of the following must apply:

- (1) The public provider must meet all the provider qualifications as defined by rules adopted by the Secretary. A county that satisfies its duties under G.S. 122C-115(a) through a consolidated human services agency may not be considered a qualified provider for purposes of this subdivision.
- (2) The LME must adopt a conflict of interest policy that applies to all provider contracts.
- (3) The interlocal agreement must provide that any liabilities of the public provider shall be paid from its unobligated surplus funds and that if those funds are not sufficient to satisfy the indebtedness, the remaining indebtedness shall be apportioned to the participating counties.

(d1) The Secretary shall ensure that there is fair competition among providers. The Department shall study the effect of subsection (d) of this section and shall report its findings and recommendations to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by December 1, 2009."

SECTION 4.(m) G.S. 122C-112.1(a) reads as rewritten:

"§ 122C-112.1. **Powers and duties of the Secretary.**

- (a) The Secretary shall do all of the following:
 - (1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.
 - (2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.
 - (3) Establish a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and ~~counties~~ county programs for the management ~~and provision~~ of mental health, developmental disabilities, and substance abuse services.
 - (4) Adopt rules specifying the content and format of LME business plans.
 - (5) Review LME business plans and, upon approval of the ~~business plan~~, certify the submitting area authority or county program to ~~provide~~ manage the delivery of mental health, developmental disabilities, and substance abuse ~~services~~ services in the applicable catchment area.
 - (6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards. ~~Procedures~~ The procedures shall include the development and use of critical performance measures and report cards for each area authority and county program.
 - (7) Conduct regularly scheduled monitoring and oversight of area authority, county programs, and all providers of public services. Monitoring and oversight shall ~~include~~ be used to assess compliance

- with the ~~program~~ LME business plan, plan and implementation of core administrative functions, and fiscal and administrative practices and LME functions. Monitoring shall also address include the examination of LME and provider performance on outcome measures, measures including adherence to best practices, the assessment of consumer satisfaction, and the review of client rights complaints, and adherence to best practices.complaints.
- (8) Make findings and recommendations based on information and data collected pursuant to subdivision (7) of this subsection and submit these findings and recommendations to the applicable area authority board, county program director, board of county commissioners, providers of public services, and to the Local Consumer Advocacy Office.
 - (9) ~~Assist~~ Provide ongoing and focused technical assistance to area authorities and county programs in the implementation of the LME functions and the establishment and operation of community-based programs. The technical assistance required under this subdivision includes, but is not limited to, the technical assistance required under G.S. 122C-115.4(d)(2). The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.
 - (10) Operate State facilities and adopt rules pertaining to their operation.
 - (11) Develop a unified system of services provided ~~in area, county, and at the community level, by State facilities, and by providers enrolled or under a contract with the State.~~ State and an area authority or county program.
 - (12) Adopt rules governing the expenditure of all funds for mental health, developmental disabilities, and substance abuse programs and services.
 - (13) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2.
 - (14) Adopt rules for the implementation of the uniform portal process.
 - (15) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.
 - (16) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252.
 - (17) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse.
 - (18) Administer and enforce rules that are conditions of participation for federal or State financial aid.
 - (19) Carry out G.S. 122C-361.
 - (20) Monitor the fiscal and administrative practices of area authorities and county programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by area authorities and county programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting

- procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles.
- (21) Provide technical assistance, including conflict resolution, to counties in the development and implementation of area authority and county program business plans and other matters, as requested by the county.
 - (22) Develop a methodology to be used for calculating county resources to reflect cash and in-kind contributions of the county.
 - (23) Adopt rules establishing program evaluation and management of mental health, developmental disabilities, and substance abuse services.
 - (24) Adopt rules regarding the requirements of the federal government for grants-in-aid for mental health, developmental disabilities, or substance abuse programs which may be made available to area authorities or county programs or the State. This section shall be liberally construed in order that the State and its citizens may benefit from the grants-in-aid.
 - (25) Adopt rules for determining minimally adequate services for purposes of G.S. 122C-124.1 and G.S. 122C-125.
 - (26) Establish a process for approving area authorities and county programs to provide services directly in accordance with G.S. 122C-141.
 - (27) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance abuse.
 - (28) Enforce the protection of the rights of clients served by State facilities, area authorities, county programs, and providers of public services.
 - (29) Adopt rules for the enforcement of the protection of the rights of clients being served by State facilities, area authorities, county programs, and providers of public services.
 - (30) Prior to requesting approval to close a State facility under G.S. 122C-181(b):
 - a. Notify the Joint Legislative Commission on Governmental Operations, the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and members of the General Assembly who represent catchment areas affected by the closure; and
 - b. Present a plan for the closure to the members of the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Health and Human Services for their review, advice, and recommendations. The plan shall address specifically how patients will be cared for after closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the

committees to which the plan is presented under this subdivision.

- (31) Ensure that the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services is coordinated with the Medicaid State Plan and NC Health Choice.
- (32) Implement standard forms, quality measures, contracts, processes, and procedures to be used by all area authorities and county programs with other public and private service providers. The Secretary shall consult with LMEs, CFACs, counties, and qualified providers regarding the development of any forms, processes, and procedures required under this subdivision. Any document, process, or procedure developed under this subdivision shall place an obligation upon providers to transmit to LMEs timely client information and outcome data. The Secretary shall also adopt rules regarding what constitutes a clean claim for purposes of billing.

When implementing this subdivision, the Secretary shall balance the need for LMEs to exercise discretion in the discharge of their LME functions with the need of qualified providers for a uniform system of doing business with public entities.

- (33) Develop and implement critical performance indicators to be used to hold LMEs accountable for managing the mental health, developmental disabilities, and substance abuse services system. The performance system indicators shall be implemented no later than July 1, 2007."

SECTION 5. Article 4 of Chapter 122C is amended by adding a new Part to read:

"Part 4A. Consumer and Family Advisory Committees.

"§ 122C-170. Local Consumer and Family Advisory Committees.

(a) Area authorities and county programs shall establish committees made up of consumers and family members to be known as Consumer and Family Advisory Committees (CFACS). A local CFAC shall be a self-governing and a self-directed organization that advises the area authority or county program in its catchment area on the planning and management of the local public mental health, developmental disabilities, and substance abuse services system.

Each CFAC shall adopt bylaws to govern the selection and appointment of its members, their terms of service, the number of members, and other procedural matters. At the request of either the CFAC or the governing board of the area authority or county program, the CFAC and the governing board shall execute an agreement that identifies the roles and responsibilities of each party, channels of communication between the parties, and a process for resolving disputes between the parties.

(b) Each of the disability groups shall be equally represented on the CFAC, and the CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment area. The terms of members shall be three years, and no member may serve more than two consecutive terms. The CFAC shall be composed exclusively of:

- (1) Adult consumers of mental health, developmental disabilities, and substance abuse services.
- (2) Family members of consumers of mental health, developmental disabilities, and substance abuse services.

(c) The CFAC shall undertake all of the following:

- (1) Review, comment on, and monitor the implementation of the local business plan.
- (2) Identify service gaps and underserved populations.
- (3) Make recommendations regarding the service array and monitor the development of additional services.
- (4) Review and comment on the area authority or county program budget.
- (5) Participate in all quality improvement measures and performance indicators.
- (6) Submit to the State Consumer and Family Advisory Committee findings and recommendations regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.

(d) The director of the area authority or county program shall provide sufficient staff to assist the CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on business plans and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

"§ 122C-171. State Consumer and Family Advisory Committee.

(a) There is established the State Consumer and Family Advisory Committee (State CFAC). The State CFAC shall be a self-governing and self-directed organization that advises the Department and the General Assembly on the planning and management of the State's public mental health, developmental disabilities, and substance abuse services system.

(b) The State CFAC shall be composed of 21 members. The members shall be composed exclusively of adult consumers of mental health, developmental disabilities, and substance abuse services; and family members of consumers of mental health, developmental disabilities, and substance abuse services. The terms of members shall be three years, and no member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority. The members shall be appointed as follows:

- (1) Nine by the Secretary. The Secretary's appointments shall reflect each of the disability groups. The terms shall be staggered so that terms of three of the appointees expire each year.
- (2) Three by the General Assembly upon the recommendations of the President Pro Tempore of the Senate, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.
- (3) Three by the General Assembly upon the recommendations of the Speaker of the House of Representatives, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.
- (4) Three by the Council of Community Programs, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of

the appointees shall be staggered so that the term of one appointee expires every year.

- (5) Three by the North Carolina Association of County Commissioners, one each of whom shall come from the three State regions for institutional services (Eastern Region, Central Region, and Western Region). The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(c) The State CFAC shall undertake all of the following:

- (1) Review, comment on, and monitor the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (2) Identify service gaps and underserved populations.
- (3) Make recommendations regarding the service array and monitor the development of additional services.
- (4) Review and comment on the State budget for mental health, developmental disabilities, and substance abuse services.
- (5) Participate in all quality improvement measures and performance indicators.
- (6) Receive the findings and recommendations by local CFACs regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services.
- (7) Provide technical assistance to local CFACs in implementing their duties.

(d) The Secretary shall provide sufficient staff to assist the State CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on the State Plan and departmental budget, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

(e) State CFAC members shall receive the per diem and allowances prescribed by G.S. 138-5 for State boards and commissions."

SECTION 6.(a) Notwithstanding G.S. 143-23, an area authority or a county program may transfer from one age or disability category to a different age or disability category up to fifteen percent (15%) of the funds initially allocated to the age or disability category from which funds are being transferred. Prior to the transfer, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall verify that the transfer meets applicable federal requirements. Area authorities and county programs shall:

- (1) Publicly document that they have addressed the service needs of the category from which the funds are being transferred before any transfer may occur; and
- (2) Submit the required documentation to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Fiscal Research Division within 15 days of making the transfer.

SECTION 6.(b) This section expires July 1, 2007.

SECTION 7. G.S. 122C-3(14) reads as rewritten:

"§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

...

- (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
- a. An "area facility", which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
 - b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. ~~When the services offered are provided to individuals who are mentally ill or developmentally disabled, these~~ These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. ~~When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more.~~ Facilities for individuals who are substance abusers include chemical dependency facilities;
 - c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
 - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
 - e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
 - f. A "State facility", which is a facility that is operated by the Secretary;
 - g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
 - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers."

SECTION 8. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:38 p.m. on the 19th day of July, 2006.

H.B. 1502**Session Law 2006-143****AN ACT TO ENACT THE SCHOOLCHILDREN'S HEALTH ACT OF 2006.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 is amended by adding a new subdivision to read:

"(33) Duty to Protect the Health of School-Age Children From Toxicants at School. – The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

- a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.
- b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.
- c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.
- d. Establish guidelines for Integrated Pest Management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.
- e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds."

SECTION 2. G.S. 115C-47 is amended by adding four new subdivisions to read:

"(45) To Address the Use of Pesticides in Schools. – Local boards of education shall adopt policies that address the use of pesticides in schools. These policies shall:

- a. Require the principal or the principal's designee to annually notify the students' parents, guardians, or custodians as well as school staff of the schedule of pesticide use on school property and their right to request notification. Such notification shall be made, to the extent possible, at least 72 hours in advance of nonscheduled pesticide use on school property. The notification requirements under this subdivision do not apply to the application of the following types of pesticide products: antimicrobial cleansers, disinfectants, self-contained baits and crack-and-crevice treatments, and any pesticide products

classified by the United States Environmental Protection Agency as belonging to the U.S.E.P.A. Toxicity Class IV, "relatively nontoxic" (no signal word required on the product's label).

- b. Require the use of Integrated Pest Management. As used in this sub-subdivision, "Integrated Pest Management" or "IPM" means the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate.
- (46) To Address Arsenic-Treated Wood in the Classroom and on School Grounds. – Local boards of education shall prohibit the purchase or acceptance of chromated copper arsenate-treated wood for future use on school grounds. Local boards of education shall seal existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds, according to the guidelines established under G.S. 115C-12(33). Local boards of education are encouraged to test the soil on school grounds for contamination caused by the leaching of arsenic-treated wood.
- (47) To Address Mercury in the Classroom and on School Grounds. – Local boards of education are encouraged to remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Local boards of education shall prohibit the future use of bulk elemental mercury, chemical mercury compounds, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers.
- (48) To Address Exposure to Diesel Exhaust Fumes. – Local boards of education shall adopt policies and procedures to reduce students' exposure to diesel emissions."

SECTION 3. Nothing in this act shall be construed to create a private cause of action against the State Board of Education, a local board of education, or their agents or employees.

SECTION 4. G.S. 115C-47(45)b., as enacted by Section 2 of this act, becomes effective October 1, 2011. The remainder of this act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:39 p.m. on the 19th day of July, 2006.

H.B. 1301

Session Law 2006-144

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS TO REQUIRE LICENSEES TO DEMONSTRATE CONTINUING COMPETENCE IN THE PRACTICE OF PHYSICAL THERAPY,

AND STRENGTHENING THE AUTHORITY OF THE NORTH CAROLINA MEDICAL BOARD TO DISCIPLINE PHYSICIANS AND CERTAIN OTHERS, AND DESIGNATING INFORMATION RELEASED TO PATIENT SAFETY ORGANIZATIONS AS CONFIDENTIAL, AND ALLOWING CERTAIN GROUPS TO PRACTICE AS PROFESSIONAL CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.26 is amended by adding the following new subdivision to read:

"§ 90-270.26. Powers of the Board.

The Board shall have the following general powers and duties:

...

(3a) Establish mechanisms for assessing the continuing competence of licensed physical therapists or physical therapist assistants to engage in the practice of physical therapy, including approving rules requiring licensees to periodically, or in response to complaints or incident reports, submit to the Board: (i) evidence of continuing education experiences; (ii) evidence of minimum standard accomplishments; or (iii) evidence of compliance with other Board-approved measures, audits, or evaluations; and specify remedial actions if necessary or desirable to obtain license renewal or reinstatement;

...."

SECTION 2. G.S. 90-270.32 reads as rewritten:

"§ 90-270.32. Renewal of license; lapse; revival.

(a) Every licensed physical therapist or physical therapist assistant shall, during the month of January of every year, apply to the Board for a renewal of licensure and pay to the secretary-treasurer the prescribed fee. Licenses that are not so renewed shall automatically lapse. The Board may decline to renew licenses of physical therapists or physical therapist assistants for failure to comply with any required continuing competency measures.

(b) The manner in which lapsed licenses shall be ~~revived~~ revived, reinstated, or extended shall be established by the Board in its discretion."

SECTION 3.1. G.S. 55B-14(c) is amended by adding the following new subdivision to read:

"(9) A physician practicing orthopedics and a podiatrist who is licensed under Article 12A of Chapter 90 of the General Statutes to render either or both of orthopedic services and podiatric and related services that the respective stockholders are licensed, certified, or otherwise approved to provide."

SECTION 3.2. G.S. 131E-95(c) reads as rewritten:

"(c) Information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that performs any accreditation or certification including the Joint Commission on Accreditation of Healthcare ~~Organizations.~~ Organizations, or to a patient safety organization or its designated contractors. Information released under this subsection shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or ~~certification.~~ certification, or the patient safety organization's or its contractors' analysis of patient safety and health care quality. Information released under this subsection

retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this section, and the standards review or patient safety organization shall keep the information confidential subject to this section, except as necessary to carry out the organization's patient safety, accreditation, or certification activities. For the purposes of this section, 'patient safety organization' means an entity that collects and analyzes patient safety or health care quality data of providers for the purpose of improving patient safety and the quality of health care delivery and includes, but is not limited to, an entity formed pursuant to Public Law No. 109-41."

SECTION 4. G.S. 90-14 reads as rewritten:

"§ 90-14. Revocation, suspension, annulment or denial of license.

(a) The Board shall have the power to place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke a license or other authority to practice medicine in this State, issued by the Board to any person who has been found by the Board to have committed any of the following acts or conduct, or for any of the following reasons:

- (1) Immoral or dishonorable conduct.
- (2) Producing or attempting to produce an abortion contrary to law.
- (3) Made false statements or representations to the Board, or who has willfully concealed from the Board material information in connection with an application for a license.
- (4) Repealed by Session Laws 1977, c. 838, s. 3.
- (5) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality. The Board is empowered and authorized to require a physician licensed by it to submit to a mental or physical examination by physicians designated by the Board before or after charges may be presented against the physician, and the results of the examination shall be admissible in evidence in a hearing before the Board.
- (6) Unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without North Carolina. The Board shall not revoke the license of or deny a license to a person solely because of that person's practice of a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices unless, by competent evidence, the Board can establish that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective.
- (7) Conviction in any court of a crime involving moral turpitude, or the violation of a law involving the practice of medicine, or a conviction of a felony; provided that a felony conviction shall be treated as provided in subsection (c) of this section.

- (8) By false representations has obtained or attempted to obtain practice, money or anything of value.
- (9) Has advertised or publicly professed to treat human ailments under a system or school of treatment or practice other than that for which the physician has been educated.
- (10) Adjudication of mental incompetency, which shall automatically suspend a license unless the Board orders otherwise.
- (11) Lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection the Board may consider repeated acts of a physician indicating the physician's failure to properly treat a patient. The Board may, upon reasonable grounds, require a physician to submit to inquiries or examinations, written or oral, ~~by members of the Board or by other physicians licensed to practice medicine in this State,~~ as the Board deems necessary to determine the professional qualifications of such licensee. In order to annul, suspend, deny, or revoke a license of an accused person, the Board shall find by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered.
- (11a) Not actively practiced medicine or practiced as a physician assistant, or having not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for an initial license from the Board or a request, petition, motion, or application to reactivate an inactive, suspended, or revoked license previously issued by the Board. The Board is authorized to adopt any rules or regulations it deems necessary to carry out the provisions of this subdivision.
- (12) Promotion of the sale of drugs, devices, appliances or goods for a patient, or providing services to a patient, in such a manner as to exploit the patient, and upon a finding of the exploitation, the Board may order restitution be made to the payer of the bill, whether the patient or the insurer, by the physician; provided that a determination of the amount of restitution shall be based on credible testimony in the record.
- (13) Having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against or having a license to practice medicine denied by the licensing authority of any jurisdiction. For purposes of this subdivision, the licensing authority's acceptance of a license to practice medicine voluntarily relinquished by a physician or relinquished by stipulation, consent order, or other settlement in response to or in anticipation of the filing of administrative charges against the physician's license, is an action against a license to practice medicine.
- (14) The failure to respond, within a reasonable period of time and in a reasonable manner as determined by the Board, to inquiries from the Board concerning any matter affecting the license to practice medicine.

- (15) The failure to complete an amount not to exceed 150 hours of continuing medical education during any three consecutive calendar years pursuant to rules adopted by the Board.

~~For any of the foregoing reasons, the Board may deny the issuance of a license to an applicant or revoke a license issued to a physician, may suspend such a license for a period of time, and may impose conditions upon the continued practice after such period of suspension as the Board may deem advisable, may limit the accused physician's practice of medicine with respect to the extent, nature or location of the physician's practice as the Board deems advisable. The Board may, in its discretion and upon such terms and conditions and for such period of time as it may prescribe, restore a license so revoked or rescinded,~~otherwise acted upon, except that no license that has been revoked shall be restored for a period of two years following the date of revocation.

(b) The Board shall refer to the ~~State Medical Society Physician Health and Effectiveness Committee~~North Carolina Physicians Health Program all physicians and physician assistants whose health and effectiveness have been significantly impaired by alcohol, drug addiction or mental illness. Sexual misconduct shall not constitute mental illness for purposes of this subsection.

(c) A felony conviction shall result in the automatic revocation of a license issued by the Board, unless the Board orders otherwise or receives a request for a hearing from the person within 60 days of receiving notice from the Board, after the conviction, of the provisions of this subsection. If the Board receives a timely request for a hearing in such a case, the provisions of G.S. 90-14.2 shall be followed.

~~(d) The Board and its members and staff may release confidential or nonpublic information to any health care licensure board in this State or another state about the issuance, denial, annulment, suspension, or revocation of a license, or the voluntary surrender of a license by a Board licensed physician, including the reasons for the action, or an investigative report made by the Board. The Board shall notify the physician within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the physician. If the physician requests, in writing, within 30 days after being notified that such information has been transmitted, he shall be furnished a copy of all information so transmitted. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency, or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities.~~

(e) The Board and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law.

(f) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or reporting, investigating, or providing an expert medical opinion to the Board regarding the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice medicine and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice medicine, or for making a

recommendation to the Board in the nature of peer review, in good faith and without fraud and malice.

(g) Prior to taking action against any licensee who practices integrative medicine for providing care not in accordance with the standards of practice for the procedures or treatments administered, the Board shall consult with a licensee who practices integrative medicine."

SECTION 5. G.S. 90-14.5 reads as rewritten:

"§ 90-14.5. Use of ~~trial examiner or~~ hearing committee and depositions.

~~Where the licensee requests that the hearing herein provided for be held by the Board in a county other than the county designated for the holding of the meeting of the Board at which the matter is to be heard, the Board may designate in writing one or more of its members to conduct the hearing as a trial examiner or trial committee, to take evidence and report a written transcript thereof to the Board at a meeting where a majority of the members are present and participating in the decision. Evidence and testimony may also be presented at such hearings and to the Board in the form of depositions taken before any person designated in writing by the Board for such purpose or before any person authorized to administer oaths, in accordance with the procedure for the taking of depositions in civil actions in the superior court.~~

(a) The Board, in its discretion, may designate in writing three or more of its members to conduct hearings as a hearing committee to take evidence.

(b) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. A quorum of the Board will issue a final decision."

SECTION 6. G.S. 90-14.13 reads as rewritten:

"§ 90-14.13. Reports of disciplinary action by health care institutions; reports of professional liability insurance awards or settlements; immunity from liability.

(a) The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-56, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of that institution, report to the Board ~~any revocation, suspension, or limitation of~~ the following actions involving a physician's privileges to practice in that institution: institution within 30 days of the date that the action takes effect:

- (1) A summary revocation, summary suspension, or summary limitation of privileges, regardless of whether the action has been finally determined.
- (2) A revocation, suspension, or limitation of privileges that has been finally determined by the governing body of the institution.
- (3) A resignation from practice or voluntary reduction of privileges.

- (4) Any action reportable pursuant to Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, not otherwise reportable under subdivisions (1), (2), or (3) of this subsection.
- (a1) A hospital is not required to ~~report the report:~~
- (1) The suspension or limitation of a physician's privileges for failure to timely complete medical records unless the suspension or limitation is the third within the calendar year for failure to timely complete medical records. Upon reporting the third suspension or limitation, the hospital shall also report the previous two suspensions. ~~suspensions or limitations. The institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article.~~
- (2) A resignation from practice due solely to the physician's completion of a medical residency, internship, or fellowship.
- (a2) The Board shall report all violations of this subsection (a) of this section known to it to the licensing agency for the institution involved. The licensing agency for the institution involved is authorized to order the payment of a civil penalty of two hundred fifty dollars (\$250.00) for a first violation and five hundred dollars (\$500.00) for each subsequent violation if the institution fails to report as required under subsection (a) of this section.
- (b) Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.
- (c) The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund or other fund operated or administered by a hospital authority, group, or provider shall report to the Board within ~~30 days:~~days any of the following:
- (1) Any award of damages or settlement of any claim or lawsuit affecting or involving the physician a person licensed under this Article that it insures, or insures.
- (2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.
- (3) A malpractice payment that is reportable pursuant to Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, not otherwise reportable under subdivision (1) or (2) of this subsection.
- (d) ~~The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public.~~ The Board shall report all violations of this paragraph-section to the Commissioner of Insurance. The Commissioner of Insurance is authorized to order the payment of a civil penalty of two hundred fifty dollars (\$250.00) for a first violation and five hundred dollars (\$500.00) for each subsequent violation against an insurer for failure to report as required under this section.
- (e) The Board may request details about any action covered by this section, and the licensees or officers shall promptly furnish the requested information. The reports required by this section are privileged, not open to the public, confidential and are not subject to discovery, subpoena, or other means of legal compulsion for release to

anyone other than the Board or its employees or agents involved in application for license or discipline, except as provided in G.S. 90-16. Any personofficer making a report required by this section, providing additional information required by the Board, or testifying in any proceeding as a result of the report or required information shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

SECTION 7. G.S. 90-16 reads as rewritten:

"§ 90-16. **Self-reporting requirements; confidentiality of Board investigative information; cooperation with law enforcement; patient protection; Board to keep public records. record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure.**

(a) The North Carolina Medical Board shall keep a regular record of its proceedings in a book kept for that purpose, together with the names of the members of the Board present, the names of the applicants for license, and other information as to its actions. The North Carolina Medical Board shall cause to be entered in a separate book the name of each applicant to whom a license is issued to practice medicine or surgery, along with any information pertinent to such issuance. The North Carolina Medical Board shall publish the names of those licensed in three daily newspapers published in the State of North Carolina, within 30 days after granting the same. A transcript of any such entry in the record books, or certificate that there is not entered therein the name and proficiency or date of granting such license of a person charged with the violation of the provisions of this Article, certified under the hand of the secretary and the seals of the North Carolina Medical Board, shall be admitted as evidence in any court of this State when it is otherwise competent.

(b) The Board may in a closed session receive evidence involving or concerning the treatment of a patient who has not expressly or impliedly consented to the public disclosure of such treatment as may be necessary for the protection of the rights of such patient or of the accused physician and the full presentation of relevant evidence.

(c) All records, papers, investigative files, investigative reports, other investigative information and other documents containing information in the possession of or received or gathered-collected-and-compiled by the Board, or its members or employees as a result of investigations, inquiries or interviews conducted in connection with a licensing, ~~or complaint or~~, disciplinary ~~matter-matter~~, or report of professional liability insurance awards or settlements pursuant to G.S. 90-14.13, shall not be considered public records within the meaning of Chapter 132 of the General Statutes; ~~provided, however, that any~~ Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Board, its employees or agents involved in the application for license or discipline of a license holder, except as provided in subsection (d) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician or other person performing an expert review for the Board.

(d) The Board shall provide the licensee or applicant with access to all information in its possession that the Board intends to offer into evidence in presenting its case in chief at the contested hearing on the matter, subject to any privilege or restriction set forth by rule, statute, or legal precedent, upon written request from a licensee or applicant who is the subject of a complaint or investigation, or from the

licensee's or applicant's counsel, unless good cause is shown for delay. The Board is not required to provide any of the following:

- (1) A Board investigative report.
- (2) The identity of a non-testifying complainant.
- (3) Attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Rules of Civil Procedure or the Rules of Evidence.

(e) Information furnished to a licensee or applicant, or counsel for a licensee or applicant, under subsection (d) of this section shall be subject to discovery or subpoena between and among the parties in a civil case in which the licensee is a party.

(f) Any notice or statement of charges against any licensee, or any notice to any licensee of a hearing in any proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of any such investigation, inquiry or interview; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes.

(g) In any proceeding before the Board, in any record of any hearing before the Board, and in the notice of the charges against any licensee (notwithstanding any provision herein to the contrary) the Board may withhold from public disclosure the identity of a patient who has not expressly or impliedly consented to the public disclosure of treatment by the accused physician.

(h) If investigative information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board shall report the information to the appropriate law enforcement agency.

(i) The Board shall cooperate with and assist a law enforcement agency conducting a criminal investigation of a licensee by providing information that is relevant to the criminal investigation to the investigating agency. Information disclosed by the Board to an investigative agency remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

(j) All persons licensed under this Article shall self-report to the Board within 30 days of arrest or indictment any of the following:

- (1) Any felony arrest or indictment.
- (2) Any arrest for driving while impaired or driving under the influence.
- (3) Any arrest or indictment for the possession, use, or sale of any controlled substance.

(k) The Board, its members and staff, may release confidential or nonpublic information to any health care licensure board in this State or another state about the issuance, denial, annulment, suspension, or revocation of a license, or the voluntary surrender of a license by a licensee of the Board, including the reasons for the action, or an investigative report made by the Board. The Board shall notify the licensee within 60 days after the information is transmitted. A summary of the information that is being transmitted shall be furnished to the licensee. If the licensee requests in writing within 30 days after being notified that the information has been transmitted, the licensee shall be furnished a copy of all information so transmitted. The notice or copies of the information shall not be provided if the information relates to an ongoing criminal investigation by any law enforcement agency or authorized Department of Health and Human Services personnel with enforcement or investigative responsibilities."

SECTION 8. G.S. 90-21.22(d) reads as rewritten:

"(d) Upon investigation and review of a physician licensed by the Board, or a physician assistant approved by the Board, or upon receipt of a complaint or other information, a society which enters a peer review agreement with the Board, or the Academy if it has a peer review agreement with the Board, as appropriate, shall report immediately to the Board detailed information about any physician or physician assistant licensed or approved by the Board if:

- (1) The physician or physician assistant constitutes an imminent danger to the public or to himself by reason of impairment, mental illness, physical illness, the commission of professional sexual boundary violations, or any other reason;
- (2) The physician or physician assistant refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence; or
- (3) It reasonably appears that there are other grounds for disciplinary action."

SECTION 9. G.S. 131E-87 reads as rewritten:**"§ 131E-87. Reports of disciplinary action; immunity from liability.**

The chief administrative officer of each licensed hospital in the State shall report to the appropriate occupational licensing board the details, as prescribed by the board, of any revocation, suspension, ~~or limitation~~ limitation, or voluntary reduction of privileges of a health care provider to practice in that hospital. Each hospital shall also report to the board its medical staff resignations. Reports concerning physician privileges and resignations shall be made in accordance with G.S. 90-14.13. Any person making a report required by this section shall be immune from any resulting criminal prosecution or civil liability unless the person knew the report was false or acted in reckless disregard of whether the report was false."

SECTION 10.(a) The subcommittee of the North Carolina Medical Board and the subcommittee of the Board of Nursing, directed to work jointly to develop rules to govern the performance of medical acts by registered nurses pursuant to G.S. 90-6(b), shall examine adding the provisions of G.S. 90-14(a) to their joint rules that set forth grounds for action against a registered nurse's approval to perform medical acts.

SECTION 10.(b) The subcommittee of the North Carolina Medical Board and the subcommittee of the North Carolina Board of Pharmacy, directed to work jointly to develop rules to govern the performance of medical acts by clinical pharmacist practitioners pursuant to G.S. 90-6(c), shall examine adding the provisions of G.S. 90-14(a) to the joint rules that set forth grounds for action against a clinical pharmacist practitioner's approval to perform medical acts.

SECTION 10.(c) The North Carolina Medical Board, the Board of Nursing, and the North Carolina Board of Pharmacy shall report to the Chairs of the House Committee on Health, the Senate Committee on Health Care, the House Select Committee on Health Care, and the Subcommittee on Patient Safety, Quality and Accountability of the House Select Committee on Health Care on the adoption of the provisions of G.S. 90-14(a) as part of the joint rules governing the practice of medical acts for nurse practitioners and clinical pharmacist practitioners. The boards shall file their reports no later than September 1, 2006.

SECTION 10.(d) The North Carolina Medical Board shall examine the provisions of G.S. 90-14.13 and may develop policies or guidance governing the reporting requirements of that section. The Medical Board may recommend additional

legislation, if necessary, to implement these policies prior to the convening of the 2007 General Assembly.

SECTION 11. Sections 4 through 9 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law. Section 4 applies to acts or omissions that occur on or after the effective date. Section 5 applies to hearings held on or after the effective date. Section 6 applies to awards entered or settlements entered into on or after the effective date.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:40 p.m. on the 19th day of July, 2006.

S.B. 277

Session Law 2006-145

AN ACT TO PROVIDE FOR A VOLUNTARY MEDIATION PROGRAM FOR RESIDENTIAL PROPERTY INSURANCE CLAIMS CAUSED BY DISASTERS, TO REQUIRE SELLERS OF PROPERTY INSURANCE TO DISCLOSE MAJOR PERILS THAT ARE NOT COVERED, TO PROVIDE FOR THE TOLLING OF TIME PERIODS IN PROPERTY INSURANCE POLICIES IN DISASTER SITUATIONS, TO PROVIDE FOR THE TOLLING OF TIME PERIODS IF THE OPERATIONS OF THE DEPARTMENT OF INSURANCE ARE INTERRUPTED BY FORCE MAJEURE, AND TO AUTHORIZE MOTOR VEHICLE SELF-INSURANCE FOR CERTAIN RELIGIOUS ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 44 of Chapter 58 of the General Statutes is amended by renaming the title of Article 44 to "Property Insurance Policies," by designating G.S. 58-44-1 through G.S. 58-44-55 of Article 44 as Part 1, entitled "Policy Provisions," and by adding the following new Part 2:

"Part 2. Mediation of Emergency or Disaster-Related Property Insurance Claims.

"§ 58-44-70. Purpose and scope.

(a) This Part creates a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of a disaster. This Part applies only if a state of disaster has been proclaimed for the State or for an area within the State by the Governor under G.S. 166A-6; or if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.

(b) The procedure established by this Part is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this State. This Part does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The Commissioner may designate a person, either within the Department or outside of the Department, as the Administrator or other functionary to carry out any of the Commissioner's duties under this Part.

"§ 58-44-75. Definitions.

As used in this Part:

- (1) Administrator. – The Commissioner or the Commissioner's designee; and the term is used interchangeably with regard to the Commissioner's duties under this Part.
- (2) Disaster. – As defined in G.S. 166A-4(1).
- (3) Disputed claim. – Any matter on which there is a dispute as to the cause of loss or amount of loss, for which the insurer has denied payment, in part or whole, with respect to claims arising from a disaster. Unless the parties agree to mediate a disputed claim involving a lesser amount, a "disputed claim" involves the insured requesting one thousand five hundred dollars (\$1,500) or more to settle the dispute, or the difference between the positions of the parties is one thousand five hundred dollars (\$1,500) or more. "Disputed claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on a referral to the insurer's special investigative unit, to the Commissioner. A disputed claim does not include one in which there has been a denial of coverage for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.
- (4) Mediation. – As defined in G.S. 7A-38.1(b)(2).
- (5) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a claim.
- (6) Party or parties. – The insured and his or her insurer, including a surplus lines insurer and the underwriting associations in Articles 45 and 46 of this Chapter, when applicable.

"§ 58-44-80. Notification of right to mediate.

(a) Insurers shall notify their insureds in this State who have claimed damage to their residential properties as a result of a disaster of their right to mediate disputed claims. This requirement applies to all disputed claims, including instances where checks have been issued by the insurer to the insured.

(b) The insurer shall mail a notice of the right to mediate disputed claims to an insured within five days after the time the insured or the Administrator notifies the insurer of a dispute regarding the insured's claim. The following apply:

- (1) If the insurer has not been notified of a disputed claim before the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate to the insured in the same mailing as the notice of denial.
- (2) The insurer is not required to send a notice of the right to mediate if a claim is denied because the amount of the claim is less than the insured's deductible.
- (3) The mailing that contains the notice of the right to mediate shall include any consumer brochure on mediation developed by the Commissioner.
- (4) Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.
- (5) The first paragraph of the notice shall contain the following statement: "The General Assembly of North Carolina has enacted a law to facilitate fair and timely handling of residential property insurance claims arising out of disasters. The law gives you the right to attend a mediation conference with your insurer in order to settle any dispute

you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

(c) The notice shall also:

- (1) Include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the Administrator.
- (2) Include the insurer's address and phone number for requesting additional information.
- (3) State that the Administrator will select the mediator.

"§ 58-44-85. Request for mediation.

(a) If an insured requests mediation before receipt of the notice of the right to mediate or if the date of the notice cannot be established, the insurer shall be notified by the Administrator of the existence of the dispute before the Administrator processes the insured's request for mediation. An insured must request mediation within 60 days after the denial of the claim; failure to request mediation within this time period shall only bar the right to demand mediation; it shall not prejudice any other legal right or remedy of the insured nor prohibit the insurer from voluntarily accepting the request for mediation.

(b) If an insurer receives a request for mediation, the insurer shall electronically transmit the request to the Administrator within three business days after receipt of the request. If the Department receives any requests, it shall electronically transmit those requests to the Administrator within three business days after receipt. The Administrator shall notify the insurer within 48 hours after receipt of a request that has been filed with the Department.

(c) In the insured's request for mediation, the insured shall provide the following information, if known:

- (1) Name, address, and daytime telephone number of the insured and location of the property if different from the address given.
- (2) The claim and policy number for the insured.
- (3) A brief description of the nature of the dispute.
- (4) The name of the insurer and the name, address, and phone number of the contact person for scheduling mediation.
- (5) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood, earthquake, or windstorm.

"§ 58-44-90. Mediation fees.

(a) The fees of the mediator and of the Administrator as established by the Commissioner shall be borne by the insurer. All other mediation costs, fees, or expenses shall be borne by the party incurring such costs, fees, or expenses unless otherwise provided in a settlement agreement.

(b) The Commissioner may establish fee schedules, through emergency rules, for fees to be paid to the Administrator, the mediator, and for timely and untimely mediation cancellations.

"§ 58-44-95. Scheduling of mediation; qualification of mediator.

(a) The Administrator shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the Dispute Resolution Commission under G.S. 7A-38.2; or, if not, shall be approved at the

discretion of the Administrator only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in North Carolina in good standing with the North Carolina State Bar. A mediator shall not make an award or render a judgment as to the merits of the action.

"§ 58-44-100. Conduct of the mediation conference.

(a) The Commissioner may adopt rules, in addition to the provisions of this section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for the conduct of mediation conferences under this Part. The rules adopted by the Commissioner shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.

(c) The mediator shall terminate the negotiations if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties.

(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

(e) The representative of the insurer attending the conference shall:

(1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.

(2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

(f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.

(g) The mediator shall be in charge of the conference and will establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution, and, where not inconsistent, with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2.

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference.

(i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

"§ 58-44-105. Post mediation.

(a) Within five days after the conclusion of the conference, the mediator shall file with the Administrator a mediator's status report, on a form prescribed by the Administrator, indicating whether or not the parties reached a settlement.

(b) Mediation is nonbinding unless all the parties specifically agree otherwise in writing.

(c) If the parties reach a settlement, the mediator shall include a copy of the settlement agreement with the status report. Within three business days after the conclusion of the conference, the insurer shall disburse the settlement funds in accordance with the terms of the settlement agreement. The insured has three business days after receipt of the settlement funds within which to notify the Commissioner and the insurer of the insured's decision to rescind the settlement agreement, as long as the insured has not received the settlement funds by electronic means or has not cashed or deposited any check or draft disbursed to the insured in payment of the settlement funds.

(d) If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any subsequent claim under the policy shall be presented as a separate claim.

"§ 58-44-110. Nonparticipation in mediation program.

If the insured decides not to participate in this program or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insurance policy, by litigation, or by any other dispute resolution procedure available under North Carolina law.

"§ 58-44-115. Commissioner's review.

If the insured rescinds a settlement agreement in accordance with G.S. 58-44-105(c), the Commissioner may review the settlement agreement to determine if the agreement was fair to the parties to the agreement. If the Commissioner, upon review and within 10 business days after receiving notice of the rescission, deems that it was fair to the parties, the insured, upon notice from the Commissioner, may withdraw the rescission within five business days after receipt of notice from the Commissioner and reinstate the settlement agreement as if no rescission had taken place. The Commissioner's review and findings shall not be offered or accepted as evidence in any subsequent proceedings.

"§ 58-44-120. Relation to Administrative Procedure Act.

The applicable provisions of Chapter 150B of the General Statutes shall govern issues relating to mediation that are not addressed in this Part. The provisions of this Part shall govern in the event of any conflict with Chapter 150B of the General Statutes."

SECTION 2. Article 44 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-44-60. Notice to property insurance policyholder about flood, earthquake, mudslide, mudflow, and landslide insurance coverage.

(a) Every insurer that sells property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

(b) As used in this section, "insurer" includes an entity that sells property insurance under Articles 21, 45, or 46 of this Chapter."

SECTION 3. Article 2 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"§ 58-2-46. State of disaster; automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.

Whenever a state of disaster is proclaimed for the State or for an area within the State under G.S. 166A-6 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

- (1) The application of any provision in an insurance policy insuring real property and its contents that are located within the geographic area designated in the proclamation or declaration, which provision requires an insured to file a proof of loss within a certain period of time after the occurrence of the loss, shall be stayed for the time period not exceeding the expiration of the disaster proclamation or declaration and all renewals of the proclamation or 45 days, whichever is later.
- (2) As used in this subdivision, "insurance company" includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under Articles 45 and 46 of this Chapter. All insurance companies, premium finance companies, collection agencies, and other persons subject to this Chapter shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the time period covered by the proclamation or declaration. This deferral period shall be 30 days from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. The Commissioner may extend any deferral period in this subdivision, depending on the nature and

- severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.
- (3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Chapter; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.
- (4) In addition to the requirements of G.S. 58-45-35(e), for separate windstorm policies that are written by an insurer other than the Underwriting Association, losses shall be adjusted by the insurer that issued the property insurance and not by the insurer that issued the windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that issued the property insurance for reasonable expenses incurred by that insurer in adjusting the windstorm losses.

"§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.

Regardless of whether a state of disaster has been proclaimed under G.S. 166A-6 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days. The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order."

SECTION 4. G.S. 58-2-25(a) reads as rewritten:

"(a) The Commissioner shall appoint or employ such other deputies, actuaries, economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees that the Commissioner considers to be necessary for the proper execution of the work of the Department, at the compensation that is fixed and provided by the Department of Administration. If the Commissioner considers it to be necessary for the proper execution of the work of the Department to contract with persons, except to fill authorized employee positions, all of those contracts, except those provided for in Articles 36 and 37 and Part 2 of Article 44 of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143 of the General Statutes."

SECTION 5. Article 9A of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-279.33A. Religious organizations; self-insurance.

(a) Notwithstanding any other provision of this Article or Article 13 of this Chapter, any recognized religious organization having established tenets or teachings and that has been in existence at all times since December 31, 1950, may qualify as a self-insurer by obtaining a certificate of self-insurance from the Commissioner as

provided in subsection (c) of this section if the Commissioner determines that all of the following conditions are met:

- (1) Members of the religious organization operate five or more vehicles that are registered in this State and are either owned or leased by them.
- (2) Members of the religious organization hold a common belief in mutual financial assistance in time of need to the extent that they share in financial obligations of other members who would otherwise be unable to meet their obligations.
- (3) The religious organization has met all of its insurance obligations for the five years preceding its application.
- (4) The religious organization is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the financial solvency of the religious organization is in question.
- (5) Neither the religious organization nor any of its participating members has any judgments arising out of the operation, maintenance, or use of a motor vehicle taken against them that have remained unsatisfied for more than 30 days after becoming final.
- (6) There are no other factors that cause the Commissioner to believe that the religious organization and its participating members are not of sufficient financial ability to pay judgments against them.
- (7) The religious organization and its participating members meet other requirements that the Commissioner by administrative rule prescribes.

(b) The Commissioner may, in the Commissioner's discretion, upon the application of a religious organization, issue a certificate of self-insurance when the Commissioner is satisfied that the religious organization is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the religious organization. The certificate shall serve as evidence of insurance for the purposes of G.S. 20-7(c1), 20-13.2(e), 20-16.1, 20-19(k), and 20-179.3(l).

(c) A group issued a certificate of self-insurance under this section shall notify the Commissioner in writing if any person ceases to be a member of the group. The group shall notify the Commissioner within 10 days of the person's removal or departure from the group.

(d) The Commissioner may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving 30 days' written notice of cancellation to the religious organization whenever there is reason to believe that the religious organization to whom the certificate was issued is no longer qualified as a self-insurer under this section."

SECTION 6. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 7. Section 2 of this act becomes effective January 1, 2007, and applies to policies issued or renewed on or after that date. Section 5 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

Became law upon approval of the Governor at 7:41 p.m. on the 19th day of July, 2006.

S.B. 1809

Session Law 2006-146

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO MAKE REVISIONS TO PREVIOUSLY AUTHORIZED INDEBTEDNESS FOR VARIOUS CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. SELF-LIQUIDATING PROJECTS

SECTION 1.1. The purpose of this part is: (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the part for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund.

SECTION 1.2. The capital improvements projects, and their respective costs, authorized by this part to be constructed or otherwise acquired and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both, are as follows:

Appalachian State University	
Central Dining Facility – Phase II	\$4,850,000
East Carolina University	
Mendenhall Student Center and Ledonia Wright Cultural Center –	
Expansion and Renovation	\$39,000,000
Todd Dining Hall – Renovation	\$2,100,000
Brody School of Medicine – Renovations.....	\$1,200,000
Brody School of Medicine – Health Science Campus – Renovations	\$6,000,000
Elizabeth City State University	
Residence Hall-Heating, Ventilating, and Air-Conditioning	
Improvements	\$1,500,000
North Carolina State University	
Derr Track – Renovation and Expansion – Phase II	\$2,500,000
Partners VI Building and Parking Deck	\$40,000,000
Centennial Campus Infrastructure	\$10,000,000
The University of North Carolina at Chapel Hill	
Food Service Facilities – Renovation and Expansion	\$3,500,000
Science Complex – Phase II	\$92,200,000
Carmichael Auditorium – Renovation and Expansion.....	\$15,000,000
Research Resource Facility – Phase II	\$12,400,000

Residence Halls – Improvements	\$2,000,000
Woollen Gymnasium – Renovation	\$4,500,000
Boshamer Baseball Stadium – Improvements.....	\$14,000,000
Cogeneration Warehouse	\$500,000
Steam Infrastructure Improvements	\$55,700,000
Electrical Infrastructure Improvements	\$29,530,000
Bell Tower Development – Phase I.....	\$10,000,000
Global Education & International Studies Center – Improvements	\$2,500,000
The University of North Carolina at Charlotte	
Prospector Hall – Renovation – Phase II.....	\$4,000,000
Residence Halls – Phase IX.....	\$38,800,000
The University of North Carolina at Greensboro	
Residence Hall – Acquisition	\$29,500,000
The University of North Carolina at Wilmington	
Residence Halls – Improvements	\$4,900,000
Western Carolina University	
Residence Hall – Renovation and Expansion.....	\$1,000,000
Winston-Salem State University	
Residence Hall – Renovation	\$4,500,000
SECTION 1.3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their respective costs are authorized by this part to be constructed and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both:	
North Carolina State University	
Residence Halls – Renovation – Supplement.....	\$11,500,000
Thompson Theater – Renovation and Expansion – Supplement.....	\$4,500,000
The University of North Carolina at Chapel Hill	
Residence Halls – Improvements – Supplement	\$2,500,000
Botanical Garden Visitor Education Center – Supplement	\$5,000,000
Educational Foundation Office Building – Supplement	\$12,000,000
Cobb Residence Hall – Renovation – Supplement.....	\$5,116,000
Residence College – Phase II – Supplement	\$8,000,000
Rizzo Center – Expansion – Supplement	\$5,300,000
The University of North Carolina at Charlotte	
Student Union – Supplement	\$10,000,000
The University of North Carolina at Greensboro	
Parking Deck Addition – Supplement.....	\$1,000,000

The University of North Carolina at Pembroke	
University Center Expansion – Supplement.....	\$2,000,000
The University of North Carolina at Wilmington	
University Union Building – Expansion and Renovation – Supplement	\$12,000,000
Western Carolina University	
Dodson Cafeteria Replacement – Supplement	\$12,250,000
New Student Recreation Center – Supplement	\$6,200,000

SECTION 1.4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this part. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 1.5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 1.2 and 1.3 of this part. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 1.2 and 1.3 of this part plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 1.4 of this part.

SECTION 1.6. With respect to the University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution.

SECTION 1.7. With respect to the forty-seven million five hundred twenty-two thousand dollars (\$47,522,000) Major Infrastructure Improvements capital project at the University of North Carolina at Chapel Hill that was previously approved in S.L. 2005-324, the institution may accomplish a portion thereof by payment to Duke Power Company LLC to acquire distribution capacity in improvements to be constructed by Duke Power Company LLC to three electrical substations located on the institution's property and by negotiating and executing any rights-of-way, easements, leases, and any other required agreements with Duke Power Company LLC necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such negotiation and execution of such rights-of-way, easements, leases, or other required agreements therefor.

SECTION 1.8. With respect to the thirty million dollars (\$30,000,000) Student Housing project at North Carolina Central University that was previously approved in S.L. 2005-324, the institution may construct one or more new or purchase one or more existing buildings to meet its need for student housing.

PART II. REVISE UNIVERSITY SPECIAL INDEBTEDNESS

SECTION 2.1. Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, 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.

Aggregate Maximum	Maximum before 7/1/05	Project
\$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 temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	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, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	~~Land acquisition, site~~ Site preparation, and engineering, architectural, and other consulting services ~~for facilities for development of the~~ services, and the <u>construction of a research building on the joint</u> 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~~ <u>services, and construction of a Nursing and Allied Health Building</u> 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~~ <u>services, and construction of a building 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.</u>
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~~ <u>Land acquisition, site preparation, and engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.</u>
TOTAL:		
\$388,000,000	\$265,000,000"	

PART III. REVISE UNIVERSITY GENERAL OBLIGATION INDEBTEDNESS

SECTION 3.1. 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 State University by reducing the scope of "Williams Hall Laboratory Building-Comprehensive Renovation." The unused funds from "Williams Hall Laboratory Building-Comprehensive Renovation" should be transferred to the following projects listed under the section entitled North Carolina State University: "Polk Hall Laboratory Building-Comprehensive Renovation," "1911 Classroom Building-Comprehensive Renovation," and "Park Shops-Comprehensive Renovation and Use Conversion for General Academic Use." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina State University by:

(1) Reducing the portion to "Williams Hall Laboratory Building-Comprehensive Renovation" by six million four hundred forty-five thousand dollars (\$6,445,000) so that it reads six million four hundred twenty thousand five hundred dollars (\$6,420,500),

- (2) Increasing the portion to "Polk Hall Laboratory Building -Comprehensive Renovation" by one hundred one thousand three hundred sixty-two dollars (\$101,362) so that it reads fifteen million one hundred fifty-four thousand three hundred sixty-two dollars (\$15,154,362),
- (3) Increasing the portion to "1911 Classroom Building Comprehensive Renovation" by two million six hundred sixty-three thousand seven hundred fifty-seven dollars (\$2,663,757) so that it reads nine million six hundred thirty-five thousand seven hundred fifty-seven dollars (\$9,635,757),
- (4) Increasing the portion to "Park Shops – Comprehensive Renovation and Use Conversion for General Academic Use" by three million six hundred seventy-nine thousand eight hundred eighty-one dollars (\$3,679,881) so that it reads nine million nine hundred ninety thousand five hundred eighty-one dollars (\$9,990,581).

SECTION 3.2. 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 Chapel Hill by reducing the scope of "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" and by reducing the scope of "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Hamilton Hall-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Greenlaw Hall-Comprehensive Renovation of Classrooms and Lecture Halls." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Chapel Hill by:

- (1) Reducing the portion to "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred forty-six dollars (\$845,246) so that it reads eight hundred eighty-six thousand seven hundred fifty-four dollars (\$886,754),
- (2) Reducing the portion to "Hill and Davie Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred twenty-nine dollars (\$1,324,729) so that it reads six hundred twenty-four thousand two hundred seventy-one dollars (\$624,271),
- (3) Increasing the portion to "Hamilton Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred forty-six dollars (\$845,246) so that it reads two million three hundred eighty-four thousand two hundred forty-six dollars (\$2,384,246),
- (4) Increasing the portion to "Greenlaw Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred twenty-nine dollars (\$1,324,729) so that it reads three million one hundred forty-nine thousand seven hundred twenty-nine dollars (\$3,149,729).

SECTION 3.3. 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 reducing the scope of "Forsyth Classroom and Computer Labs Renovation," and by transferring the unused funds to "Stillwell Lab Building-Comprehensive Renovation." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Western Carolina University by:

- (1) Reducing the portion to "Forsyth Classroom and Computer Labs Renovation" by three million two hundred thousand dollars (\$3,200,000) so that it reads three million eight hundred sixty-four thousand dollars (\$3,864,000),
- (2) Increasing the portion to "Stillwell Lab Building-Comprehensive Renovation" by three million two hundred thousand dollars (\$3,200,000) so that it reads eighteen million two hundred fifty-seven thousand five hundred dollars (\$18,257,500).

SECTION 3.4. Nothing in this part is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

PART IV. EFFECTIVE DATE

SECTION 4.1. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2006.

Became law upon approval of the Governor at 7:42 p.m. on the 19th day of July, 2006.

S.B. 1351

Session Law 2006-147

AN ACT TO PROVIDE FOR STAGGERED FOUR-YEAR TERMS FOR THE MORVEN TOWN COUNCIL AND FOUR-YEAR TERMS FOR THE MAYOR OF THE TOWN OF MORVEN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of the Charter of the Town of Morven, being Chapter 71, Private Laws of 1897, as rewritten by Chapter 765 of the Session Laws of 1947, reads as rewritten:

"Sec. 3. The officers of said town shall consist of a mayor and five ~~commissioners, council members, and the present mayor and commissioners shall continue until their successors are elected on the first Tuesday after the first Monday in May, 1947, and have qualified.~~ In 2007 and quadrennially thereafter, the mayor shall be elected for a four-year term. In 2007, the two council members receiving the highest numbers of votes shall be elected to four-year terms, and the three council members receiving the next highest numbers of votes shall be elected to two-year terms. In 2009 and quadrennially thereafter, three council members shall be elected to four-year terms. In 2011 and quadrennially thereafter, two council members shall be elected to four-year terms."

SECTION 2. Section 4 of the Charter of the Town of Morven, being Chapter 71, Private Laws of 1897, as rewritten by Chapter 765 of the Session Laws of 1947, reads as rewritten:

"Sec. 4. The election for mayor and ~~commissioners~~council members shall be held ~~on the first Tuesday after the first Monday in May and biannially thereafter, and shall be~~ conducted in accordance with the General Municipal Election laws as set out in ~~Article 3 of Chapter 160~~ 160A of the General Statutes of North Carolina. Elections shall be decided under the plurality method set out in G.S. 163-292.

SECTION 3. Section 7 of the Charter of the Town of Morven, being Chapter 71, Private Laws of 1897, as rewritten by Chapter 765 of the Session Laws of 1947, is repealed.

SECTION 4. The Charter of the Town of Morven, being Chapter 71, Private Laws of 1897, as amended, is further amended by deleting "board of commissioners" wherever it appears and substituting "town council" and by deleting "commissioner" wherever it appears and substituting "town council member".

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law on the date it was ratified.

S.B. 1804

Session Law 2006-148

AN ACT TO AUTHORIZE THE TOWNS OF TRYON AND BOILING SPRINGS TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

PART I. TRYON OCCUPANCY TAX

SECTION 1.1 Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Tryon may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1(c) Distribution and Use of Tax Revenue. – The Town of Tryon shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Tryon Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Tryon and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

- (3) Tourism-related expenditures. – Expenditures that, in the judgment of Tryon Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating the Tryon Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Tryon shall be the ex officio finance officer of the Authority.

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 1 of this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Tryon Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART II. BOILING SPRINGS OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Boiling Springs shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. ADMINISTRATIVE PROVISIONS

SECTION 3. Administrative provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Boiling Springs, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls,

Troutman, Tryon, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART IV. EFFECTIVE DATE

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law on the date it was ratified.

H.B. 2027

Session Law 2006-149

AN ACT TO ALLOW THE TOWNS OF BENSON, CASWELL BEACH, CHADBOURN, AND TABOR CITY TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-11 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the Towns of Benson, Bladenboro, Chadbourn, Elizabethtown, Rose Hill and Bladenboro, and Tabor City. Section 2 of this act applies only to Moore County."

SECTION 1.1. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town of Caswell Beach may, by ordinance, regulate the operation of golf carts on any street or road within the confines of the municipal limits of Caswell Beach. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

SECTION 1.2. S.L. 2005-58 is repealed.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law on the date it was ratified.

H.B. 2339

Session Law 2006-150

AN ACT TO ALLOW DAVIE, AND LINCOLN COUNTIES TO REQUIRE THAT ALL TAXES BE PAID ON REAL PROPERTY BEFORE THE REGISTER OF DEEDS MAY RECORD A DEED TRANSFERRING THAT PROPERTY AND BEFORE A BUILDING PERMIT MAY BE ISSUED WITH RESPECT TO THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. Section 3(b) of S.L. 2005-433 reads as rewritten:

"**SECTION 3.(b)** This section applies to Davie, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin Counties only."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law on the date it was ratified.

H.B. 2047

Session Law 2006-151

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS
AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING
SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"§ 66-350. Definitions.

The following definitions apply in this Article:

- (1) Cable service. – Defined in G.S. 105-164.3.
- (2) Cable system. – Defined in 47 U.S.C. § 522.
- (3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.
- (4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:
 - a. Is in effect on January 1, 2007.
 - b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.
- (5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.
- (6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.
- (7) Secretary. – The Secretary of State.
- (8) Video programming. – Defined in G.S. 105-164.3.

"§ 66-351. State franchising authority.

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system

over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"§ 66-352. Award of franchise and commencement of service.

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

- (1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
- (2) A description and map of the area to be served.
- (3) A list of each county and city in which the described service area is located, in whole or in part.
- (4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

- (1) The effective date of a notice of franchise for that area.
- (2) A description and map of the service area.
- (3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"§ 66-353. Annual service report.

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual report. The report must include all of the following:

- (1) The effective date of a notice of franchise for that area.
- (2) A description and map of the service area.

- (3) The approximate number of households in the service area.
- (4) A description and a map of the households passed in the service area as of July 1.
- (5) The percentage of households passed in the service area as of July 1.
- (6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
- (7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
- (8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"§ 66-354. General filing and report requirements.

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet Web site or indicate on its Internet Web site that the document has been filed and is available for inspection.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.

"§ 66-355. Effect on existing local franchise agreement.

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

- (1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does

not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.

- (2) A cable service provider under an existing agreement that is in effect on January 1, 2007, may terminate the agreement in accordance with subsection (b) of this section in any of the following circumstances:
- a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.
 - b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider for substantially the same franchise area and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.
 - c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's Web site about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.
- (3) A cable service provider under an existing agreement that expired before January 1, 2007, may obtain a State-issued franchise. The provider does not have to terminate the agreement in accordance with subsection (b) of this section because the agreement has expired.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"§ 66-356. Service standards and requirements.

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

- (1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.
- (2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.
- (3) Technological impediments to providing service to the affected group.
- (4) Inability to obtain access to property required to provide service to the affected group.
- (5) Competitive pressure to respond to service offered by another cable service provider or other provider of video programming.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are unfair or deceptive acts or practices under G.S. 75-1.1.

To facilitate the resolution of customer complaints, the cable service provider must include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina (insert information on how to contact the Consumer Protection Division of the Attorney General's Office).

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"§ 66-357. Availability and use of PEG channels.

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within the later of the following:

- (1) 120 days after the cable service provider receives the written request.
- (2) 30 days after any interconnection requested under G.S. 66-358(a)(1) is accomplished.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

- (1) All of the PEG channels must have scheduled programming for at least eight hours a day.
- (2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.
- (3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least a 60-day notice to a county or city before it reprograms a PEG channel that is not used.

The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

(g) Compliance. – A county or city that has not received PEG channel capacity as required by this section may bring an action to compel a cable service provider to comply with this section.

"§ 66-358. Transmission of PEG channels.

(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

- (1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.
- (2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

- (1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.
- (2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"§ 66-359. PEG channel grants.

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must, to the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

- (1) The grant may not exceed twenty-five thousand dollars (\$25,000).
- (2) The applicant must match the grant on a dollar-for-dollar basis.
- (3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.
- (4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"§ 66-360. Service to public building.

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a residential retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

- (50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

- "(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article~~ Article.
- a. ~~Direct-to-home satellite service.~~
 - b. ~~Cable service."~~

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catch line "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"§ 105-164.4D. Bundled services.

~~Bundled Services.~~—When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

- (1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.
- (2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catch line to G.S. 105-164.12B reads as rewritten:

"§ 105-164.12B. **Bundled transactions. Tangible personal property bundled with service contract.**"

SECTION 7. 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 three one hundredths percent (18.03%) the following percentages~~ of the net proceeds of the taxes collected during the ~~quarter~~ quarter:

- (1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948). (\$2,620,948), must be distributed to cities in accordance with this section. This The 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. 105-20, 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.~~
- (2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.44I. **Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars (\$25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars (\$2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars (\$2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars (\$2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by March 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed

to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

- (1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.
- (2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.
- (3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.
- (4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

- (1) It is eligible to receive funds under G.S. 136-41.2.
- (2) A majority of the mileage of its streets is open to the public.

(j) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"§ 160A-211. Privilege license taxes.

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the

businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction. Prohibition.~~ – A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

- (1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.
- (2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).
- (3) Providing video programming taxed under G.S. 105-164.4(a)(6).
- (d) ~~Telecommunications Restriction. — A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."~~

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to to all of the following:

- (1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair~~; repair.
- (2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions~~; obstructions.
- (3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain~~; domain.
- (4) The power to close any street or alley either permanently or ~~temporarily~~; temporarily.
- (5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges~~; bridges.
- (6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the ~~surface~~; surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.
- (7) The power to provide for lighting the streets, alleys, and bridges of the ~~city~~; and city.
- (8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of a telephone system and any of the enterprises listed in G.S. 160A-311 and for the operation of telephone systems. G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city.~~ No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 years ~~and cable television franchises shall not be granted for a period of more than 20 years.~~ Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(b), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by March 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

- (1) The number of customer complaints.
- (2) The types of customer complaints.
- (3) The different means of resolving customer complaints.

SECTION 19. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law. A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed:

- (1) Competition in video programming services.
- (2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.
- (3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly.

SECTION 22. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

In the General Assembly read three times and ratified this the 12th day of July, 2006.

Became law upon approval of the Governor at 12:45 p.m. on the 20th day of July, 2006.

H.B. 2468

Session Law 2006-152

AN ACT TO ALLOW THE TOWN OF CLARKTON TO REGULATE GOLF CARTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-11 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the Towns of Clarkton, Elizabethtown, Rose Hill and Bladenboro. Section 2 of this act applies only to Moore County."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law on the date it was ratified.

H.B. 1151

Session Law 2006-153

AN ACT TO PROVIDE FOR INSTRUCTIONAL PLANNING TIME AND A DUTY-FREE LUNCH PERIOD FOR TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-105.27 reads as rewritten:

"§ 115C-105.27. **Development and approval of school improvement plans.**

(a) In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants shall be elected by their respective groups by secret ballot. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher

organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.

(b) The strategies for improving student performance:

- (1) Shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The plan may provide that a portion of these funds is used for mentor training and for release time and substitute teachers while mentors and teachers mentored are meeting;
- (1a) Shall, if the school serves students in kindergarten or first grade, include a plan for preparing students to read at grade level by the time they enter second grade. The plan shall require kindergarten and first grade teachers to notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time the child enters second grade. The plan may include the use of assessments to monitor students' progress in learning to read, strategies for teachers and parents to implement that will help students improve and expand their reading, and provide for the recognition of teachers and strategies that appear to be effective at preparing students to read at grade ~~level~~. level;
- (2) Shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter;
- (3) May include a decision to use State funds in accordance with G.S. 115C-105.25;
- (4) Shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school;
- (5) May include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of ~~G.S. 115C-105.26~~. 115C-105.26;
- (6) Shall include a plan to provide a duty-free lunch period for every teacher on a daily basis or as otherwise approved by the school improvement team; and
- (7) Shall include a plan to provide duty-free instructional planning time for every teacher under G.S. 115C-301.1, with the goal of providing an average of at least five hours of planning time per week.

(c) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building

for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

(d) The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

(e) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

SECTION 2. G.S. 115C-105.26(b) reads as rewritten:

"(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

- (1) State laws pertaining to class size, ~~teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1; size and teacher certification;~~ and
- (2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System."

SECTION 3. G.S. 115C-301.1 reads as rewritten:

"§ 115C-301.1. Duty-free instructional planning time, ~~period~~.

All full-time assigned classroom teachers shall be provided a ~~daily~~ duty-free instructional planning time ~~period~~ during regular student contact hours. The duty-free instructional planning time ~~period~~ shall be provided to the maximum extent that (i) the safety and proper supervision of children may allow during regular student contact hours and (ii) insofar as funds are provided for this purpose by the General Assembly. If the safety and supervision of children does not allow a ~~daily~~ duty-free instructional planning time ~~period~~ during regular student contact hours for a given teacher, the funds provided by the General Assembly for the duty-free instructional planning time ~~period~~

for that teacher shall revert to the general fund. Principals shall not unfairly burden a given teacher by making that teacher give up his or her duty-free instructional planning time period on an ongoing, regular basis without the consent of the teacher."

SECTION 4. This act becomes effective July 1, 2006, and applies to school improvement plans beginning with the 2007-2008 school year.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:45 p.m. on the 23rd day of July, 2006.

H.B. 1987

Session Law 2006-154

AN ACT TO MAKE CHANGES TO THE STATUTORY BASIC AND STANDARD HEALTH PLANS FOR SMALL EMPLOYERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-125 is amended by adding a new subsection to read:

"(a1) Both the basic health care plan and the standard health care plan provided for in subsection (a) of this section may have optional deductible and co-payment levels as may be determined by the small employer carrier, including high deductible options. A small employer carrier shall file any changes in deductibles or co-payment levels with the Commissioner for the Commissioner's approval prior to implementing the changes in this State. The Commissioner may periodically review and update the benefits provided by these plans to address trends in the small group market. The Commissioner shall consult with small employer carriers and representatives of the insurance agent and small employer communities as part of that periodic review."

SECTION 2. G.S. 58-50-125(d) reads as rewritten:

"(d) ~~Within 180 days after the Commissioner's approval under subsection (b) of this section, every small employer carrier shall, as~~

As a condition of transacting business as a small employer carrier in this State, the carrier shall either offer small employers at least one basic and one standard health care plan, plan or the alternative coverages provided in G.S. 58-50-126. Every small employer that elects to be covered under such a plan and agrees to make the required premium payments and to satisfy the other provisions of the plan shall be issued such a plan by the small employer carrier. The premium payment requirements used in connection with basic and standard health care plans may address the potential credit risk of small employers that elect coverage in accordance with this subsection by means of payment security provisions that are reasonably related to the risk and are uniformly applied.

If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group except in the case of late enrollees as provided in ~~G.S. 58-50-130(a)(4)~~. G.S. 58-50-130(a)(4b). A small employer carrier shall not modify any health benefit plan with respect to a small employer, any eligible employee, or dependent through riders, endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health

benefit plan. In the case of an eligible employee or dependent of an eligible employee who, before the effective date of the plan, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, the small employer carrier shall provide an opportunity for the eligible employee or dependent of an eligible employee to enroll in the health benefit plan currently held by the small employer."

SECTION 3. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-50-126. Alternative coverage permitted.

(a) In General. – In the case of health insurance coverage offered in this State, a small employer carrier may elect to limit the coverage offered under G.S. 58-50-125(d) if the carrier offers at least two different policy forms of health insurance coverage and both policy forms meet all of the following:

- (1) The policy forms are designed for, made available or actively marketed to, and actually enroll self-employed individuals and other small employer groups.
- (2) The policy forms meet the requirements of either subsections (b) or (c) of this section, as elected by the small employer carrier.

(b) Choice of Most Popular Policy Forms. – The requirements of this section are met for health insurance coverage policy forms offered by a small employer carrier if the carrier offers the policy forms for small group health insurance coverage with the two highest premium volume numbers of all the policy forms offered by the carrier in this State or in applicable marketing or service areas in the period involved.

(c) Choice of Two Policy Forms with Representative Coverage. – The requirements of this section are met for health insurance coverage policy forms offered by a small employer carrier in the small group market if the small employer carrier offers both policy forms described in this subsection and each policy form includes benefits substantially similar to other small group health insurance coverage offered by the small employer carrier in this State.

- (1) Lower-level coverage policy form. – A policy form is deemed a lower-level coverage policy form if the actuarial value of the benefits under the coverage is at least eighty-five percent (85%), but not greater than one hundred percent (100%) of a weighted average, as described in subdivision (3) of this subsection.
- (2) Higher-level coverage policy form. – A policy form is deemed a higher-level coverage policy form if all of the following apply:
 - a. The actuarial value of the benefits under the coverage is at least fifteen percent (15%) greater than the actuarial value of the coverage described in subdivision (1) of this subsection offered by the small employer carrier.
 - b. The actuarial value of the benefits under the coverage is at least one hundred percent (100%), but not greater than one hundred twenty percent (120%) of a weighted average, as described in subdivision (3) of this subsection.
- (3) Weighted average. – For the purposes of this subsection, a weighted average is the average actuarial value of the benefits provided by all the health insurance coverage issued, as elected by the small employer carrier, either by that small employer carrier or all small employer carriers in this State in the small group market during the previous

year, not including coverage issued under this section, weighted by enrollment for the different coverage.

(d) Election. – The small employer carrier elections of the policies to be offered under this section shall apply uniformly to all small employers in this State for that small employer carrier. The election shall be effective for a period of not less than two years.

(e) Assumptions. – For the purposes of subsection (c) of this section, the actuarial value of benefits provided under small group insurance coverage shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(f) Discontinuation of Basic or Standard Plans. – If a small employer carrier chooses to offer the plans under this section and discontinues coverage under the basic or standard health benefit plans provided for in G.S. 58-50-125, the carrier shall make available to the insured employer whose coverage is to be discontinued both of the plans offered under this section. New coverage made available under this section shall constitute replacement coverage and shall be rated in accordance with G.S. 58-50-130(b)(3).

(g) Different Policy Forms. – For purposes of this section only, policy forms that have different cost-sharing arrangements or different riders shall be considered to be different policy forms."

SECTION 4. G.S. 58-68-40(e)(2) reads as rewritten:

"(2) A self-employed individual as defined in G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans or other plans under G.S. 58-50-126 under the North Carolina Small Employer Group Health Coverage Reform Act."

SECTION 5. G.S. 58-50-110(5a) reads as rewritten:

"(5a) 'Case characteristics' means the demographic factors age, gender, family size, ~~and geographic location~~, location, and industry."

SECTION 6. G.S. 58-50-110 is amended by adding the following subdivision to read:

"(12a) "Industry" means a demographic factor used to reflect the financial risk associated with a specific industry."

SECTION 7. G.S. 58-50-130(b) reads as rewritten:

"(b) For all small employer health benefit plans that are subject to this section, the premium rates for health benefit plans subject to this section are subject to all of the following provisions:

(1) Small employer carriers shall use an adjusted-community rating methodology in which the premium for each small employer can vary only on the basis of the eligible employee's or dependent's age as determined ~~in accordance with~~ under subdivision (6) of this subsection, the gender of the eligible employee or dependent, number of family members covered, or geographic area as determined under subdivision (7) of this ~~subsection~~, subsection, or industry as determined under subdivision (9) of this subsection. Premium rates charged during a rating period to small employers with similar case characteristics for same coverage shall not vary from the adjusted community rate by more than ~~twenty percent (20%)~~ twenty-five percent (25%) for any reason, including differences in administrative costs and claims experience.

- (2) Rating factors related to age, gender, number of family members covered, ~~or geographic location~~ location, or industry may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to the Commissioner's ~~review~~ review.
- (3) A small employer carrier shall not modify the premium rate charged to a small employer or a small employer group member, including changes in rates related to the increasing age of a group member, for 12 months from the initial issue date or renewal date, unless the group is composite rated and composition of the group changed by twenty percent (20%) or more or benefits are changed. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of all of the following:
 - a. The percentage change in the adjusted community rate as measured from the first day of the prior rating period to the first day of the new rating ~~period, and~~ period.
 - b. Any adjustment, not to exceed fifteen percent (15%) annually, due to claim experience, health status, or duration of coverage of the employees or dependents of the small ~~employer, and~~ employer.
 - c. Any adjustment because of change in coverage or change in case characteristics of the small employer group.
- (4), (5) Repealed by Session Laws 1995, c. 238, s. 1.
- (6) ~~For the purposes of subsection (b) of this section, a small employer carrier shall, unless~~ Unless the small employer carrier uses composite rating, the small employer carrier shall use the following age brackets:
 - a. Younger than 15 years;
 - b. 15 to 19 years;
 - c. 20 to 24 years;
 - d. 25 to 29 years;
 - e. 30 to 34 years;
 - f. 35 to 39 years;
 - g. 40 to 44 years;
 - h. 45 to 49 years;
 - i. 50 to 54 years;
 - j. 55 to 59 years;
 - k. 60 to 64 years;
 - l. 65 years.

Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under ~~subsection (b) of this section~~ this subsection. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor.

- (7) ~~For the purposes of subsection (b) of this section, a~~ A carrier shall ~~not apply different geographic rating factors to the rates of small employers located within the same county; and~~ define geographic area to mean medical care system. Medical care system factors shall reflect the relative differences in expected costs, shall produce rates that are not excessive, inadequate, or unfairly discriminatory in the medical

care system areas, and shall be revenue neutral to the small employer carrier.

- (8) The Department may adopt rules to administer this subsection and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection. Those rules shall include consideration of differences based on all of the following:
- a. Health benefit plans that use different provider network arrangements may be considered separate plans for the purposes of determining the rating in subdivision (1) of this subsection, provided that the different arrangements are expected to result in substantial differences in claims ~~costs~~; costs.
 - b. Except as provided for in sub-subdivision a. of this subdivision, differences in rates charged for different health benefit plans shall be reasonable and reflect objective differences in plan design, but shall not permit differences in premium rates because of the case characteristics of groups assumed to select particular health benefit ~~plans; and~~ plans.
 - c. Small employer carriers shall apply allowable rating factors consistently with respect to all small employers.
- (9) In any case where the small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification divided by the lowest rate factor associated with any other industry classification shall not exceed 1.2."

SECTION 8. G.S. 58-50-149 reads as rewritten:

"§ 58-50-149. Limit on cessions to the Reinsurance Pool.

In addition to any individual or group previously reinsured in accordance with G.S. 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or delivered for original issue by a reinsuring carrier on or after October 1, 1995, if the health benefit plan provides coverage to a small employer with no more than 25 eligible employees, including self-employed individuals. Notwithstanding any other provision of law, the Pool shall cease to reinsure any individual or group on January 1, 2007. Reinsuring carriers as of that date shall continue to be governed by G.S. 58-50-135(b) and G.S. 58-50-150 until and through the termination of the Pool."

SECTION 9. G.S. 58-50-120, 58-50-125(b), (e), and (g), 58-50-135(a), 58-50-140, and 58-50-145 are repealed.

SECTION 10. G.S. 58-50-125(f) reads as rewritten:

"(f) ~~Every~~ To the extent it is required under this section and G.S. 58-68-40, every small employer carrier shall fairly market ~~the basic and standard health care plan~~ all of its small group health benefit plans it offers on a guaranteed issue basis to all small employers in the geographic areas in which the carrier makes coverage available or provides benefits."

SECTION 11. G.S. 58-50-135(b) reads as rewritten:

"(b) A small employer carrier that ~~elects to stop~~ stops participating as a reinsuring carrier ~~and to become a risk assuming carrier shall not reinsure or continue to reinsure any small employer health benefit plans under G.S. 58-50-145 and G.S. 58-50-150 as soon as the carrier becomes a risk assuming carrier; however, a reinsuring carrier electing to become a risk assuming carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any part of the year that the business was reinsured. A small employer carrier that elects to stop participating as a risk assuming~~

~~carrier and to become a reinsuring carrier may reinsure small employer health benefit plans under the provisions of G.S. 58-50-145 and G.S. 58-50-150. an assessment is made under G.S. 58-50-150."~~

SECTION 12. G.S. 58-50-150(a) reads as rewritten:

"(a) There is created a nonprofit entity to be known as the North Carolina Small Employer Health Reinsurance Pool. All carriers issuing or providing health benefit plans in this State ~~on and after~~ from January 1, ~~1992~~, 1992, until the termination of the Pool, except any small employer carrier electing to be a risk-assuming carrier, are members of the Pool."

SECTION 13. G.S. 58-3-191(b)(1) reads as rewritten:

"(b) Disclosure requirements. – Each health benefit plan shall provide the following applicable information to plan participants and bona fide prospective participants upon request:

- (1) The evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, ~~58-50-126~~, 58-50-55), or the contract and benefit summary of any other type of health benefit plan;"

SECTION 14. G.S. 58-50-125(h) reads as rewritten:

"(h) The provisions of ~~subsections (b), (d), and (g) and subdivision (e)(2) subsection (d)~~ of this section apply to every health benefit plan delivered, issued for delivery, renewed, or continued in this State or covering persons residing in this State on or after the date the plan becomes operational, as determined by the Commissioner. For purposes of this subsection, the date a health benefit plan is continued is the anniversary date of the issuance of the health benefit plan."

SECTION 15. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:46 p.m. on the 23rd day of July, 2006.

H.B. 2188

Session Law 2006-155

AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter V of Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 11B.

"Challenge to a Candidacy.

"§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

- (1) Board. – State Board of Elections.
- (2) Candidate. – A person having filed a notice of candidacy under Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes.
- (3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

- (4) Office. – The elected office for which the candidate has filed or petitioned.

"§ 163-127.2. When and how a challenge to a candidate may be made.

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9.

"§ 163-127.3. Panel to conduct the hearing on a challenge.

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board.

"§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district

for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

- (2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.
- (3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.
- (4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

- (1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.
- (2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.
- (3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. – The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

"§ 163-127.5. Burden of proof.

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

- (1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.
- (2) The acquisition of a new domicile by actual residence at another place.
- (3) The intent of making the newer domicile a permanent domicile.

"§ 163-127.6. Appeals.

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the Board by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the following:

- (1) The challenger.
- (2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel."

SECTION 1.1. G.S. 7A-29 reads as rewritten:

"§ 7A-29. Appeals of right from certain administrative agencies.

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, the State Board of Elections under G.S. 163-127.6, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court."

SECTION 2. G.S. 163-106(g) reads as rewritten:

"(g) When any candidate files a notice of candidacy with a ~~county~~ board of elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or director~~ board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person ~~who is not eligible under subsection (c) of this section.~~ does not meet the constitutional or statutory qualifications for the office, including residency.

The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice

served on him by the ~~sheriff~~sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 3. G.S. 163-122 is amended by adding a new subsection to read:

"(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 4. G.S. 163-123 is amended by adding a new subsection to read:

"(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

SECTION 5. G.S. 163-295 reads as rewritten:

"§ 163-295. Municipal and special district elections; application of Chapter 163.

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles."

SECTION 6. The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6.

SECTION 7. 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.

SECTION 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:46 p.m. on the 23rd day of July, 2006.

H.B. 2576**Session Law 2006-156**

AN ACT TO INCREASE THE NUMBER OF ASSIGNMENTS TO THE SPECIAL ASSISTANCE IN-HOME PROGRAM OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Funds appropriated to the Department of Health and Human Services for the 2006-2007 fiscal year may be used to increase the maximum number of assignments to the special assistance in-home program to 1,500 persons.

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:47 p.m. on the 23rd day of July, 2006.

H.B. 2868**Session Law 2006-157**

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO LEASE CERTAIN PROPERTY ON THE MAINLAND SIDE OF THE HOLDEN BEACH BRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Transportation may lease to Pisces Venture LLC, d/b/a Holden Beach Marina, a portion of the airspace under and adjacent to the mainland side of the Holden Beach Bridge in Brunswick County, consisting of approximately 1.5 acres. Terms of the lease shall be negotiated between the two parties.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:51 p.m. on the 23rd day of July, 2006.

H.B. 2883**Session Law 2006-158**

AN ACT TO PROTECT MILITARY SERVICEMEMBERS AND VETERANS FROM IDENTITY THEFT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63(o) reads as rewritten:

"(o) This section does not prevent a consumer reporting agency from charging a fee of no more than ten dollars (\$10.00) to a consumer for each freeze, removal of the freeze, or temporary lifting of the freeze for a period of time, regarding access to a

consumer credit report, except that a consumer reporting agency may not charge any fee to any of the following:

- (1) A victim of identity theft who has submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.
- (2) A veteran who has received notification from the United States Department of Veterans Affairs indicating that the veteran's information is, or may be, included in the information involved in the Department of Veterans Affairs' data breach, first announced on May 22, 2006; provided that the application for a freeze includes the notification and proof of status as a veteran as defined in this subdivision. As used in this subsection, the term "veteran" means a veteran, as defined in G.S. 126-81, a member of the armed forces of the United States, as defined in G.S. 165-20, or a member of the North Carolina National Guard.
- (3) Persons who are the authorized agents of, or receive benefits from the State or federal government based on a relationship to, a veteran who would or could qualify under subdivision (2) of this subsection."

SECTION 2. From the effective date of this act through July 1, 2007, there shall be no fee charged by a consumer reporting agency for the removal of a security freeze by persons who, prior to the expiration date set forth in Section 3 of this act, placed a freeze under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), as set forth in Section 1 of this act.

SECTION 3. This act is effective when it becomes law. Section 1 of this act shall be effective for a minimum of 90 days from the date this act becomes law, but otherwise shall expire on January 1, 2007, or upon the United States Department of Veterans Affairs implementing a program that will pay for a subscription to a credit monitoring program for persons eligible for a fee waiver under G.S. 75-63(o)(2) and G.S. 75-63(o)(3), whichever event occurs first.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:53 p.m. on the 23rd day of July, 2006.

S.B. 491

Session Law 2006-159

AN ACT TO TRANSFER THE ASSETS OF THE BUTNER WATER AND SEWER SYSTEM TO THE SOUTH GRANVILLE WATER AND SEWER AUTHORITY, AND TO PROVIDE THAT BUTNER PUBLIC SAFETY SHALL BE CONSIDERED THE EQUIVALENT OF A MUNICIPAL POLICE DEPARTMENT FOR PURPOSES OF THE LAWS PROVIDING FOR COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES AND ASSISTANCE TO STATE LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. The General Assembly finds as follows:

- (1) The Camp Butner reservation is administered by the Secretary of the Department of Health and Human Services (hereinafter "Secretary") in

accordance with the provisions of Article 6 of Chapter 122C of the General Statutes (the Camp Butner reservation is variously referred to, in whole or in part, as the Camp Butner reservation, the Town of Butner, and the Community of Butner and in this act shall be referred to as the "Butner Reservation").

- (2) The Department of Health and Human Services (hereinafter "Department") owns a water and sewer system (hereinafter "System") that it has long operated pursuant to G.S. 122C-407 for the benefit of the Butner Reservation, the State institutions located in or near the Butner Reservation, adjacent areas of Granville County, and certain federal correctional institutions.
- (3) The Department has determined that it is in the best interests of the Department, its clients, and the State of North Carolina for the System to be operated as a regional water and sewer system for the benefit of the Butner Reservation, the City of Creedmoor (hereinafter "Creedmoor"), the Town of Stem (hereinafter "Stem"), adjacent areas of Granville County, and the State and federal institutions located nearby.
- (4) The Secretary pursuant to the authority vested in her by G.S. 122C-407 entered into a Memorandum of Understanding (hereinafter "MOU") with the South Granville Water and Sewer Authority, a water and sewer authority organized under and by virtue of Article 1 of Chapter 162A of the General Statutes (hereinafter "SGWASA") pursuant to which SGWASA, effective January 1, 2006, manages and operates the System.
- (5) The customers of the System have paid for water and sewer over the years the Department has operated the System, and those payments at times have generated surpluses that are held by the Department or on behalf of the Department by the State Treasurer for use for the benefit of the System.
- (6) It is in the best interests of the Department, the southern portion of Granville County including the Butner Reservation, Stem, and Creedmoor, and the State for SGWASA to own and operate the System for the benefit of all interested parties and that certain assets be transferred to SGWASA.

SECTION 2.(a) The Governor shall convey on or before January 1, 2007, or as soon thereafter as all conditions set forth herein are met, to SGWASA for the consideration set forth herein all right, title, and interest in and to all of the property, real, personal, and mixed, tangible and intangible, comprising the System owned by the State of North Carolina which is currently managed by SGWASA pursuant to the MOU; provided, however, that SGWASA, prior to said transfer, shall make the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by the State that is secured by the System or by the revenues of the System and which is outstanding as of the date of transfer. A schedule of said assets is on file with the Secretary and with the Executive Director of SGWASA.

SECTION 2.(b) In order to provide SGWASA with a reserve for operations and maintenance expenses and extraordinary repairs and replacements, the Department shall transfer to SGWASA on or before September 1, 2007, from the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General

Ledger System (ATBD 701), the sum of two million sixty-nine thousand four hundred thirty-two dollars and fifty cents (\$2,069,432.50) which is equal to one-half of one year's total operating expenses of the System, as shown on the Town of Butner Water and Sewer System Financial Statement Audit Report for the Year Ended June 30, 2005 (hereinafter the "Audit Report"). If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the remainder of the funds held by the Department for the Town of Butner Enterprise in the State of North Carolina General Ledger System (ATBD 701), including all interest and returns thereon, and all Capital Improvement Funds held by the Department for the Town of Butner Enterprise in the North Carolina General Ledger System (BD 725) not otherwise restricted by statute or otherwise obligated for the payment of existing debts, including all interest and returns thereon, shall be transferred by the Department to such successor municipality.

SECTION 2.(c) Except as hereinafter provided, SGWASA shall continue to pay to the Department a monthly sum to be used by the Department to support the operations of the Butner Reservation, set at a baseline of sixty-three thousand nine hundred fifty-seven dollars and seventy-five cents (\$63,957.75) for fiscal year 2005-2006, which sum shall be adjusted annually on July 1 to reflect the cost of salary and benefit changes granted to State employees by an act of the General Assembly or by action of the Office of State Personnel; any increases and adjustments required by law for Social Security, retirement rate increases, or longevity; and allowable inflationary cost increases for all operations costs as determined by the North Carolina Office of State Budget and Management each budget cycle and communicated to State agencies for application. This payment shall continue until such date as the majority of the functions of the Department performed at the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina. If the majority of the functions of the Butner Reservation are assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, SGWASA shall pay to such municipal corporation the sum of forty-one thousand six hundred sixty-six dollars and sixty-seven cents (\$41,666.67) per month for a period of 240 months from the date of said incorporation. Notwithstanding the foregoing, any payments pursuant to this section to the Department or a municipal corporation incorporated hereafter which assumes the majority of the functions of the Butner Reservation may, to the extent provided in any trust agreement, trust indenture, resolution, order, ordinance, or similar instrument entered or adopted by SGWASA in connection with the issuance of bonds by SGWASA, be made subordinated to the payment of current expenses of the System, the funding of reserves, and the payment of debt service on any indebtedness incurred by SGWASA for the improvement, expansion, and maintenance of the System or to make a payment to the State to retire bonds previously issued by the State for such purpose. For purposes of this section, "payment of debt service on indebtedness" includes the payments required under any financial instruments entered into by SGWASA in connection with the indebtedness, such as payments under interest rate swap agreements, reimbursement agreements, standby bond purchase agreements, or similar instruments entered into by SGWASA in connection with its bonds.

SECTION 2.(d) Any conveyance of the assets, real, personal, and mixed, transferred pursuant to the provisions of this section shall include a provision that the assets so transferred may revert to the State if SGWASA dissolves, becomes insolvent, or is otherwise unable to meet its obligations as they become due. Such reversion shall

be conditioned upon the State making the arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA to be outstanding following the reversion of the assets to the State. If, at such time, the primary functions of the Department with respect to the Butner Reservation have been assumed by a municipal corporation organized pursuant to the laws of the State of North Carolina, the assets that otherwise would revert to the State pursuant to this section shall vest in such municipality on the same terms and conditions as if the assets were reverting to the State (including that arrangements necessary to retire, assume, or otherwise satisfy any debt issued by SGWASA and to be outstanding following the reversion of the assets to the State be made as a condition to such reversion).

SECTION 3. The transfer of the System to SGWASA pursuant to the provisions of this act shall be exempt from the requirements of Article 7, Chapter 146 of the General Statutes. The conveyance of property under this act shall comply with the provisions of Article 16, Chapter 146; provided, however, that the conveyance will be exempt from the provisions of G.S. 146-74. The provisions of this act shall be exempt from all statutes concerning in any way the disposition of personal property owned by the State of North Carolina or any department or agency thereof.

SECTION 4. G.S. 160A-288 reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

- (1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and
- (2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes; and
- (3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to ~~G.S. 63-53(2)~~G.S. 63-53(2); and
- (4) Butner Public Safety."

SECTION 5. G.S. 160A-288.2 reads as rewritten:

"(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

- (1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and G.S. 116-40.5(a).
- (2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.
- (3) Butner Public Safety."

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:58 p.m. on the 23rd day of July, 2006.

H.B. 2880**Session Law 2006-160**

AN ACT TO PREVENT A PERSON WHO IS GUILTY OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT CONTINUED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(e) reads as rewritten:

"(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person who violates subsection (a) of this section shall not receive a prayer for judgment continued under any circumstances."

SECTION 2. This act becomes effective September 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 1:59 p.m. on the 23rd day of July, 2006.

H.B. 1845**Session Law 2006-161**

AN ACT TO RESTRICT THE USE OF CONTRIBUTIONS TO CANDIDATES AND CANDIDATES' CAMPAIGN FUNDS TO THOSE RELATED TO CAMPAIGNS AND OFFICE-HOLDING DUTIES; TO PROHIBIT PERSONAL USE OF CONTRIBUTIONS BY CANDIDATES AND CANDIDATE CAMPAIGN COMMITTEES; AND TO STRENGTHEN REPORTING REQUIREMENTS TO PREVENT VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.16B. Use of contributions for certain purposes.

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.
- (3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.
- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(b) As used in this section, the term 'candidate campaign committee' means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. A candidate or the candidate who directs the candidate campaign committee may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section."

SECTION 2. G.S. 163-278.8(e) reads as rewritten:

"(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately, separately with specific descriptions to provide a reasonable understanding of the expenditure."

SECTION 3. G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars (\$50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and reported individually and separately, separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars (\$50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he-the treasurer made expenditures of fifty dollars (\$50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

SECTION 4. G.S. 163-278.11(a)(2) reads as rewritten:

"(2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a

financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation."

SECTION 5. G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred."

SECTION 6. Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

Became law upon approval of the Governor at 2:01 p.m. on the 23rd day of July, 2006.

H.B. 1963

Session Law 2006-162

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX, AND TO AUTHORIZE A COUNTY THAT IMPOSES A SALES TAX FOR PUBLIC TRANSPORTATION TO LEVY A VEHICLE RENTAL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(a) reads as rewritten:

"§ 105-113.82. **Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined shall in no case not~~ be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case not~~ be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such corporation~~ in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such this~~ deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed

as above described has actually been constructed and installed and that ~~such~~the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~the devices, plants or equipment, that ~~such~~the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

(4a)(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

"..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. 105-130.2(5).105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in

connection with a ~~production~~;production, less the amount paid to a highly compensated individual:

- a. ~~Goods and services leased or purchased by the production company.~~purchased. 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,~~wages on which the ~~production company remitted withholding payments~~ are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

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

- (1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.
- (2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.
- (3) Production company. – Defined in G.S. 105-164.3.
- (4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production~~;production, less the amount paid to a highly compensated individual:
 - a. ~~Goods and services leased or purchased by the production company.~~purchased. 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,~~wages on which the ~~production company remitted withholding payments~~ are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(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:

...

- (27) ~~To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.~~provide a report required under this Chapter.

...

- (30) **(Effective for business activities occurring on or after May 1, 2005)** ~~To publish the information required under G.S. 105-129.54 and to~~ prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.

...

- (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.~~

...

- (34) **(Effective for taxable years on or after January 1, 2005)** 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.~~commissions.

...

- (36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

..."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

- "(49) Use. – ~~Means and includes the~~The exercise of any ~~right or power~~ right, power, or dominion whatsoever over tangible personal property ~~or a service by a the purchaser thereof and includes, but is not limited to, any of the property or service.~~ The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, ~~or and~~ exhaustion or consumption of the tangible personal property ~~or service by the owner or purchaser thereof, but purchaser.~~ The term does not include the sale of tangible personal property or a service in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services that ~~was~~were purchased or received during the reporting period and ~~is~~are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) 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 or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this 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."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"§ 105-164.7. Sales tax part of purchase price.

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

- a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.
- b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall 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 number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), and (j), and (l) of this section.
- (2) The total amount of purchases with respect to which refunds were claimed.
- (3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"§ 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. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.
- (2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"§ 105-187.52. Administration.

(a) Administration. – The privilege 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 these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.

(a) 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:~~The following civil penalties and criminal offenses apply:

- (1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the

drawer of the check failed to draw the check on the account that had sufficient funds.

...

- (11) ~~Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

- (12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"§ 105-449.49. **Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars (\$50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days. 105-449.47.~~ A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

- (1) A motor carrier whose registration has been withheld or revoked.
- (2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license and who transports fuel is considered to be licensed as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire.~~ transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export transported in this State~~ by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

- (1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.
- (2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.
- (3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

- (10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.

(a) ~~Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) ~~Exempt Cards at Retail. Card or Code. – An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel. An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the~~

supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card code~~ is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"§ 105-449.90. When tax return and payment are due.

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly, annually~~ or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

- (1) A refiner.
- (2) A supplier.
- (3) A bonded importer.
- (4) A blender.
- (5) A tank wagon importer.
- (6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.

(a) ~~Deduction.—A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

- ~~(1) A licensed distributor.~~
- ~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access code~~ to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

- (1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
 - a. Heating.
 - b. Drying crops.
 - c. A manufacturing process.
- (2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
 - a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
 - b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

- (3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
- a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
 - b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
- (2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
- (3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return.~~ The return must contain the following information and any other information required by the Secretary:

- (1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.
- (2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~

on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~ G.S. 105-449.90.

- (1) Motor fuel.
- (2) Alternative fuel used to operate a highway vehicle.
- (3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
- (6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
- (7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
- (8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"§ 105-249.2. **Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"§ 143B-437.71. **One North Carolina Fund established as a ~~nonreverting~~ special revenue fund.**"

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax

shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

- (1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.
- (2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2(a) of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7)~~ reads Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under ~~G.S. 105-164(a)(1)~~ 105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of

elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. G.S. 160A-537(d) reads as rewritten:

"(d) Effective Date. – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city ~~council~~, council, except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project, it may make the resolution effective immediately upon its adoption, but no ad valorem tax may be levied for a partial fiscal year."

SECTION 26. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section ~~for estates of decedents dying on or after January 1, 2002, is the maximum credit for state death taxes allowed under section 2011 of the Code without regard to the phase-out and termination of that credit under subdivision (b)(2) and subsection (f) of that section and without regard to~~ is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the Code. Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 27. 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), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.
- (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 28. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic ~~structure or site property~~ by a local ordinance adopted pursuant to ~~former G.S. 160A-400.7~~ 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 29. G.S. 106-452 is repealed.

SECTION 30. Part 3 of S.L. 1997-417 is amended by adding a new section to read:

"**SECTION 3.1.** A county authorized to impose a tax under Article 43 of Chapter 105 of the General Statutes, as enacted by Part 1 of this act, is considered an authority under Article 50 of Chapter 105 of the General Statutes, as enacted by Section 3 of this act, and the board of commissioners of that county is considered the board of trustees of the authority under Article 50. G.S. 105-554 of Article 50 does not apply to the proceeds of a tax imposed by a county considered an authority under this section. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for a public transportation system. The term 'public transportation system' has the same meaning as defined in G.S. 105-506 of Article 43."

SECTION 31. The prefatory language of Section 10 of S.L. 2006-33 reads as rewritten:

"**SECTION 10.** ~~G.S. 105-113(b)~~ G.S. 105-116(b) reads as rewritten:"

SECTION 32. If Senate Bill 1741, 2005 General Assembly, becomes law, then G.S. 105-467(b), as amended by Section 7.20(a) of that act, reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holiday contained in G.S. 105-164.13C, and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and 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 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 electricity~~, telecommunications ~~service~~, service, and ancillary service. Sales and use tax liability indirectly incurred by the 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 entity and is being erected, altered,

or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 33. Section 4 of this act is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes law and applies to the estates of decedents dying on or after January 1, 2005. Section 32 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

This bill having been presented to the Governor for his signature on the 13th day of July, 2006 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This 24th day of July, 2006.

H.B. 2465

Session Law 2006-163

AN ACT TO MAKE A TECHNICAL CORRECTION IN A LOCAL ACT TO CLARIFY THAT THE DISTRIBUTION PROCEDURE IS IN ACCORDANCE WITH 1977 LEGISLATION AS HAS BEEN THE CONTINUOUS PRACTICE SINCE THEN.

Whereas, Chapter 202 of the 1977 Session Laws provided for distribution of fifteen percent (15%) of the net profits remaining from the operation of the Dare County Alcoholic Beverage Control Board to incorporated municipalities within that county; and

Whereas, a completely separate local bill, Chapter 201 of the Session Laws of 1965 also provided for distribution of the profits, and that local act was not mentioned in the 1977 enactment; and

Whereas, Chapter 995 of the 1981 Session Laws amended the 1965 local act and changed the distribution procedures, and did not mention the 1977 law; and

Whereas, distributions continued under the 1977 law; and

Whereas, Chapter 679 of the 1995 Session Laws rewrote the 1977 law and repealed the other thread of local acts that had started in 1965; and

Whereas, the 1995 law inadvertently carried forward part of the 1981 law rather than the 1977 law; and

Whereas, Dare County is desirous of continuing to operate under the 1977 wording; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Section 1(3) of Chapter 202 of the 1977 Session Laws, as rewritten by Chapter 679 of the 1995 Session Laws, reads as rewritten:

"Section 1. After making the distributions provided in subsections (b) and (c) of G.S. 18B-805, the Dare County Alcoholic Beverage Control Board shall determine and retain from the remaining gross receipts a sufficient and proper amount necessary to be retained as working capital, within the limits set by rules of the Commission.

The entire remaining gross receipts shall be paid over to the Dare County Board of County Commissioners to be allocated as follows:

- ...
- (3) fifteen percent (15%) of the net profits remaining shall be allocated to and divided among the incorporated towns within Dare County, such sums to go to the general fund of each of the incorporated towns to be used for any governmental purpose deemed necessary by the governing body of each town; and

..."

SECTION 2. This act is effective when it becomes law, and any distributions heretofore made are validated.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law on the date it was ratified.

H.B. 2445

Session Law 2006-164

AN ACT TO AUTHORIZE THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

PART I. HALIFAX OCCUPANCY TAX

SECTION 1. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"Section 1. ~~Occupancy tax.~~Tax. – (a) ~~Authorization and scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of tax revenue.Tax Revenue. – Halifax County ~~must, shall~~, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must~~shall meet at the call of the chair and ~~must~~shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of County Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

PART II. TOWN OF AHOSKIE OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall

promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. UNIFORM PROVISIONS

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART IV. EFFECTIVE DATE

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

Became law on the date it was ratified.

S.B. 134

Session Law 2006-165

AN ACT TO ALLOW THE CITY OF CONOVER TO DISPOSE OF CERTAIN PROPERTY BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the City of Conover may convey by private negotiation and sale, on terms that it deems appropriate, any or all of its right, title, and interest in the former Broyhill Furniture properties.

SECTION 2. This act applies to the City of Conover only.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law on the date it was ratified.

S.B. 1199

Session Law 2006-166

AN ACT TO PERMIT LAW ENFORCEMENT OFFICERS AND EMPLOYEES OF VARIOUS CITIES AND TOWNS TO USE ALL-TERRAIN VEHICLES ON THE PUBLIC STREETS AND HIGHWAYS IN THOSE CITIES AND TOWNS, AND AFFECTING ABANDONED AND JUNKED VEHICLES IN CERTAIN CITIES AND TOWNS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2004-108, as rewritten by S.L. 2005-305 and S.L. 2006-25, reads as rewritten:

"**SECTION 3.** Section 1 of this act applies to the City of Albemarle and the Towns of Beaufort, Highlands, Southern Shores, and Mint Hill only. Section 2 of this act applies to the Towns of Cramerton, Dallas, Duck, Kill Devil Hills, Kitty Hawk, ~~Nags Head~~, Nags Head and Stanley, and the ~~City~~ Cities of Belmont, Cherryville, Gastonia, Kings Mountain and Mount Holly, and the ~~County~~ Counties of Cleveland and Currituck only. The term 'municipal employee' shall include employees of a county."

SECTION 2. Section 3 of S.L. 2005-10, as amended by S.L. 2006-15, reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the ~~City~~ Cities of Belmont, Bessemer City, Cherryville, Gastonia, Henderson and Mount Holly, and the Towns of Dallas, Matthews, Mint Hill, and Louisburg and Stanley. Section 2 of this act applies only to the Cities of Belmont, Bessemer City, Cherryville, Gastonia and Mount Holly and the Towns of Dallas, Mint Hill and Louisburg Hill, Louisburg and Stanley."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law on the date it was ratified.

S.B. 1431

Session Law 2006-167

AN ACT (1) TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX; AND (2) TO CREATE THE WILMINGTON CONVENTION CENTER DISTRICT; TO MODIFY THE DISTRIBUTION OF COUNTY AND CITY OCCUPANCY TAX PROCEEDS DERIVED FROM ACCOMMODATIONS LOCATED IN THE DISTRICT; TO CREATE THE NEW HANOVER COUNTY DISTRICT U; TO AUTHORIZE THE NEW HANOVER COUNTY DISTRICT U TO LEVY A THREE PERCENT OCCUPANCY TAX; AND TO MAKE ADMINISTRATIVE CHANGES TO THE WILMINGTON OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

BURGAW OCCUPANCY TAX

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Burgaw Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Burgaw shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Burgaw, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

NEW HANOVER OCCUPANCY TAX CHANGES

SECTION 4. Section 3 of S.L. 2002-138 reads as rewritten:

"**SECTION 3.** Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section ~~32(b)~~31(b) of Chapter 908 of the 1983 Session Laws."

SECTION 5. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and S.L. 2003-166, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of two percent (2%) of the gross receipts derived from the rental of any ~~accommodations room, lodging, or accommodation~~ furnished by a hotel, motel, inn, tourist camp, or similar place within the county that ~~are~~is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious ~~organizations~~organizations when furnished in furtherance of their nonprofit purpose.

(b) Additional One-Percent Tax. – In addition to the tax authorized by subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The levy, collection, administration, and repeal of the tax authorized by this subsection, and the use of tax revenue from a tax levied under this subsection, shall be in accordance with Sections 31 through 35 of this Part. New Hanover County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

- (1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:
 - a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.
 - b. The nonfederal share of the cost required to construct these projects.
 - c. The costs associated with providing enhanced public beach access.
 - d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.
- (2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.
- (3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance

officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

- (4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this ~~aet~~Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this ~~aet~~Part.

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: five ex officio members or their designees and 10 additional members appointed by the board of commissioners.

- (1) The ex officio members are listed below. Each ex officio member may designate to serve in the member's place an individual who serves on the governing body of the county or municipality that the member represents.
 - a. The chair of the board of county commissioners.
 - b. The mayor of the City of Wilmington.
 - c. The mayors of the beach towns.
- (2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.
 - a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.
 - b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.
 - c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.
 - d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.

- e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.
- f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.
- g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.
- h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.
- i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

"Sec. 34.1. Establishment of the Wilmington Convention Center District. – The area in Wilmington, North Carolina, extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side shall be known as the Wilmington Convention Center District.

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this Part-part as provided in this section:subsection:

(1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

- a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended.
- b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

- c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.
- (2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed as follows:
 - a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.
 - b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

- (1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.
- (2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, ~~maintain, or in any way promote or maintain~~ a civic center, convention center, public auditorium, or like facility."

SECTION 6.(a) Section 35 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapter 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and Section 5 of this act, reads as rewritten:

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this part as provided in this subsection:

- (1) Proceeds Derived from Accommodations in the Convention Center District. – One hundred percent (100%) of the~~The~~ net proceeds derived from accommodations located in the Wilmington Convention Center District shall be ~~distributed as follows:~~

- a. ~~Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended by this act.~~
 - b. ~~Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~
 - c. ~~Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.~~
- (2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed as follows:
- a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.
 - b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

- (1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.
- (2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility."

SECTION 6.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

NEW HANOVER COUNTY DISTRICT U

SECTION 7.(a) New Hanover County District U Created. – New Hanover County District U is created as a taxing district. Its jurisdiction consists of that part of New Hanover County that is located outside of incorporated areas within the county. New Hanover County District U is a body politic and corporate and has the power to carry out the provisions of this section. The New Hanover County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 7.(b) Authorization and Scope. – The governing body of New Hanover County District U may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 7.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if New Hanover County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 7.(d) Distribution and Use of Tax Revenue. – New Hanover County District U shall deposit one hundred percent (100%) of the net proceeds of the room occupancy and tourism development tax levied under this section into a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of New Hanover District U. None of the proceeds may be used for beach nourishment in areas within New Hanover County that are outside of the district.

SECTION 7.(e) G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averagesboro in Harnett County."

WILMINGTON OCCUPANCY TAX CHANGES

SECTION 8. Section 1 of S.L. 2002-139 reads as rewritten:

"SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a ~~local~~room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

"SECTION 1.(b) Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"SECTION 1.(c) Definitions. – The following definitions apply in this section:

- (1) ~~Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.~~
- (2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.
- (5) Wilmington Convention Center District. – The district established pursuant to Section 34.1 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended, and consisting of the area in Wilmington, North Carolina, extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side.

"SECTION 1.(c1) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit quarterly the net proceeds of a room occupancy and tourism development tax levied under this section as follows:

- (1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

- a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.
- b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.
- c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.
- (2) Proceeds Derived from Accommodations Outside the Convention Center District. – One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account.

"SECTION 1.(d) Use of Tax Revenue. Funds in Convention Center Account. –~~If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account.~~ Funds in the convention center account, established under Section 1(c1) of this act, including interest or investment income on the account, may be used only as provided in this subsection:

- (1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.
- (2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.
- (3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism

Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

- (4) If the condition set out in subdivision (3) of this subsection has been ~~met~~ met, but ~~within four years after the first levy of a tax under this section,~~ the City of Wilmington fails to demonstrate by July 1, 2008, to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

"SECTION 1.(e) Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request."

SECTION 9.(a) Section 1(c1) of S.L. 2002-139, as amended by Section 8 of this act, reads as rewritten:

"SECTION 1.(c1) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit quarterly one hundred percent (100%) of the net proceeds of a tax levied under this section as follows:

- (1) ~~Proceeds Derived from Accommodations in the Convention Center District. The net proceeds derived from accommodations located in the Wilmington Convention Center District, established in Section 34.1 of this part, shall be distributed as follows:~~
- a. ~~Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.~~

- b. ~~Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~
- c. ~~Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~
- (2) ~~Proceeds Derived from Accommodations Outside the Convention Center District. One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account."~~

SECTION 9.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

REPORTING REQUIREMENT

SECTION 10. Reporting Requirement. – The New Hanover Tourism Development Authority and the City of Wilmington shall report to the General Assembly by July 1, 2008, and annually thereafter, on the collection and distribution of occupancy tax proceeds, including how the amended distribution formula authorized by this act is working, on the progress of the construction of the convention center, and on any other issues related to the use of occupancy tax proceeds in New Hanover County and the City of Wilmington as the General Assembly deems appropriate.

EFFECTIVE DATE

SECTION 11. Sections 1 through 3 of this act are effective when they become law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2006, and applies to room occupancy and tourism development taxes levied on and after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law on the date it was ratified.

H.B. 2744

Session Law 2006-168

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO ENHANCE CERTAIN SALES AND USE TAX BENEFITS.

The General Assembly of North Carolina enacts:

PART I. JDIG CHANGES

SECTION 1.1. G.S. 143B-437.51 reads as rewritten:

"§ 143B-437.51. Definitions.

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.57.
- (2) Base years period. – ~~The first 24 months following the date set by the Committee for performance to begin under the agreement.~~ period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.
- (5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base years ~~or in subsequent years of a grant period.~~
- (5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.
- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~
- (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 1.2. G.S. 143B-437.52 reads as rewritten:

"§ 143B-437.52. Job Development Investment Grant Program.

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

- (1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

- (2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.
- (3) The project is consistent with economic development goals for the State and for the area where it will be located.
- (4) A grant under this Part is necessary for the completion of the project in this State.
- (5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars (\$15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars (\$30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

- (1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.
- (2) The ~~designation agreement~~ contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 1.3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club-club,~~ other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 1.4. G.S. 143B-437.55 reads as rewritten:**"§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~ for the project and the salaries for these positions.
- (5) An estimate of the total withholdings.
- (6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the project ~~project~~ as required by G.S. 143B-437.53(c).
- (7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
- (8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
- (9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for

an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars (\$5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- (1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.
- (2) An update on the status of projects under agreements entered into before the preceding calendar year.
- (3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.
- (3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.
- (4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars (\$5,000).
- (5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.
- (6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.
- (7) The effectiveness of the program in recruiting new and expanding businesses.
- (8) The environmental impact of businesses that have received grants under the program.
- (9) The geographic distribution of grants, by number and amount, awarded under the program.
- (10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.
- (11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.
- ~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 1.5. G.S. 143B-437.56 reads as rewritten:

"§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

- (1) The number of eligible positions to be created.
- (2) The expected duration of those positions.
- (3) The type of contribution the business can make to the long-term growth of the State's economy.
- (4) The amount of other financial assistance the project will receive from the State or local governments.
- (5) The total dollar investment the business is making in the project.
- (6) Whether the project utilizes existing infrastructure and resources in the community.
- (7) Whether the project is located in a development zone.
- (8) The number of eligible positions that would be filled by residents of a development zone.
- (9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base years, ~~unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant period.~~

(d) ~~The percentage established in the agreement shall be reduced by one-fourth~~ For any eligible position that is located in an enterprise tier four or five area, area, ~~seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.~~

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) ~~The amount of a grant associated with any specific eligible position-position,~~ including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, ~~may not exceed six thousand five hundred dollars (\$6,500) in any year."~~

SECTION 1.6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- (1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the ~~base years and later years period.~~
- (2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
- (3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
- (4) The amount of the grant based on a percentage of withholdings.
- (5) A method for determining the number of new employees hired during a grant year.
- (6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
- (7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
- (8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
- (9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.
- (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
- (11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the ~~base years period.~~
- (12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under

G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

- (13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.
- (14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.
- (15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.
- (16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.
- (17) A provision encouraging the business to hire North Carolina residents.
- (18) A provision encouraging the business to use the North Carolina State Ports.
- (19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.
- (20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).
- (21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (23) A provision stating that the amount of a grant associated with any specific eligible ~~position-position~~, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars (\$6,500) in any year.
- (24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.
- (25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 1.7. G.S. 143B-437.58 reads as rewritten:

"§ 143B-437.58. Grant recipient to submit records.

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are have been~~ created during the base years and the new eligible positions created during each subsequent preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax ~~information~~ information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 1.8. G.S. 143B-437.59 reads as rewritten:

"§ 143B-437.59. Failure to comply with agreement.

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~ business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, ~~the Committee shall terminate the agreement.~~ years:

- (1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant

be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 1.9. G.S. 143B-437.60 reads as rewritten:

"§ 143B-437.60. Disbursement of grant.

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall ~~further certify to the State Controller the grant amount of a grant for which the business is eligible under the agreement and the grant amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d).~~ The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 1.10. G.S. 143B-437.61 reads as rewritten:

"§ 143B-437.61. Transfer to Industrial Development Fund.

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 1.11. G.S. 143B-437.62 reads as rewritten:

"§ 143B-437.62. Expiration.

The authority of the Committee to enter into new agreements expires January 1, ~~2008~~2010."

SECTION 1.13. The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and

Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

- (1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.
- (2) The costs of the program in relation to other State economic development incentive programs.
- (3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.
- (4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

SECTION 1.14. This part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, ~~2006, 2008~~, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 2.2. This part is effective when it becomes law.

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

- (1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

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 State's fiscal year. Refunds applied for after the due date are barred.

- (2) Eligibility. – A facility is eligible under this subsection if it meets ~~both~~ all of the following conditions:
 - a. It is primarily engaged in one of the industries listed in this subsection.
 - b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for

the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars (\$50,000,000). For all other facilities, the required amount is one hundred million dollars (\$100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. ~~In the case of a computer manufacturing facility,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

- c. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:
 - 1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
 - 2. No part of it is leased to a third-party tenant that is not a related entity of the business.
- (3) Industries. – This subsection applies to the following industries:
 - a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.
 - b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.
 - c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.
 - d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.
 - e. Reserved for future codification purposes.
 - f. Financial services, securities operations, and related systems development. Financial services, securities operations, and related systems development means one or both of the following functions:
 - 1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
- g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
 1. Manufacturing complete automobiles and light-duty motor vehicles.
 2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
 3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.
- h. Reserved for future codification purposes.
- i. Reserved for future codification purposes.
- j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
 1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
 2. Processing botanical drugs and herbs by grading, grinding, and milling.
 3. Isolating active medicinal principals from botanical drugs and herbs.
 4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
- k. Reserved for future codification purposes.
- l. Reserved for future codification purposes.
- m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.
- (4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this

subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

- (5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010~~2013."

SECTION 3.2. The changes made to G.S. 105-164.14(j)(2)b. by Section 3.1 of this act become effective January 1, 2005, and apply to sales made on or after that date. The remainder of this part becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART IV. INTERNET DATA CENTER TAX EXEMPTION CHANGES

SECTION 4.1. G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

- "(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:
- a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~–"Internet service providers and Web search portals" industry 51811, as defined by NAICS.
 - b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
 - c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area pursuant to G.S. 105-129.3, regardless of any subsequent change in county enterprise tier status.
 - d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 4.2. G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

- "(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:
- a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including

equipment cooling systems for managing the performance of the property.

- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
- c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for ~~the~~ such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 4.3. Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This Subsection (b) of this section~~ becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law."

SECTION 4.4. Section 4.2 of this part becomes effective October 1, 2006. The remainder of this part is effective when it becomes law.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 3:24 p.m. on the 27th day of July, 2006.

S.B. 1833

Session Law 2006-169

AN ACT TO PROHIBIT DISORDERLY CONDUCT AT A MILITARY FUNERAL OR MEMORIAL SERVICE OR ANY OTHER FUNERAL OR MEMORIAL SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.4 reads as rewritten:

"§ 14-288.4. Disorderly conduct.

(a) Disorderly conduct is a public disturbance intentionally caused by any person ~~who~~ who does any of the following:

- (1) Engages in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other ~~violence; or~~ violence.
- (2) Makes or uses any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the ~~peace; or~~ peace.
- (3) Takes possession of, exercises control over, or seizes any building or facility of any public or private educational institution without the specific authority of the chief administrative officer of the institution, or his authorized ~~representative; or~~ representative.
- (4) Refuses to vacate any building or facility of any public or private educational institution in obedience ~~to~~ to any of the following:
 - a. An order of the chief administrative officer of the institution, or ~~his~~ the officer's representative, who shall include for colleges and universities the vice chancellor for student affairs or ~~his~~ the vice-chancellor's equivalent for the institution, the dean of students or ~~his~~ the dean's equivalent for the institution, the director of the law enforcement or security department for the institution, and the chief of the law enforcement or security department for the ~~institution; or~~ institution.
 - b. An order given by any fireman or public health officer acting within the scope of ~~his~~ the fireman's or officer's authority.
 - c. If a state of emergency is occurring or is imminent within the institution, an order given by any law-enforcement officer acting within the scope of ~~his~~ the officer's authority.
- (5) Shall, after being forbidden to do so by the chief administrative officer, or ~~his~~ the officer's authorized representative, of any public or private educational institution:
 - a. Engage in any sitting, kneeling, lying down, or inclining so as to obstruct the ingress or egress of any person entitled to the use of any building or facility of the institution in its normal and intended use; or
 - b. Congregate, assemble, form groups or formations (whether organized or not), block, or in any manner otherwise interfere with the operation or functioning of any building or facility of the institution so as to interfere with the customary or normal use of the building or ~~facility; or~~ facility.
- (6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent ~~thereto; or~~ thereto.
- (6a) Engages in conduct which disturbs the peace, order, or discipline on any public school bus or public school activity ~~bus; or~~ bus.

- (7) ~~Disrupts,~~ Except as provided in subdivision (8) of this subsection, disrupts, disturbs, or interferes with a religious service or assembly or engages in conduct which disturbs the peace or order at any religious service or assembly.
- (8) Engages in conduct with the intent to impede, disrupt, disturb, or interfere with the orderly administration of any funeral, memorial service, or family procession to the funeral or memorial service, including a military funeral, service, or family procession, or with the normal activities and functions occurring in the facilities or buildings where a funeral or memorial service, including a military funeral or memorial service, is taking place. Any of the following conduct that occurs within one hour preceding, during, or within one hour after a funeral or memorial service shall constitute disorderly conduct under this subdivision:
 - a. Displaying, within 300 feet of the ceremonial site, location being used for the funeral or memorial, or the family's procession route to the funeral or memorial service, any visual image that conveys fighting words or actual or imminent threats of harm directed to any person or property associated with the funeral, memorial service, or procession route.
 - b. Uttering, within 300 feet of the ceremonial site, location being used for the funeral or memorial service, or the family's procession route to the funeral or memorial service, loud, threatening, or abusive language or singing, chanting, whistling, or yelling with or without noise amplification in a manner that would tend to impede, disrupt, disturb, or interfere with a funeral, memorial service, or procession route.
 - c. Attempting to block or blocking pedestrian or vehicular access to the ceremonial site or location being used for a funeral or memorial.

As used in this section the term "building or facility" includes the surrounding grounds and premises of any building or facility used in connection with the operation or functioning of such building or facility.

(b) ~~Any~~ Except as provided in subsection (c) of this section, any person who willfully engages in disorderly conduct is guilty of a Class 2 misdemeanor.

(c) A person who commits a violation of subdivision (8) of subsection (a) of this section is guilty of:

- (1) A Class 2 misdemeanor for a first offense.
- (2) A Class 1 misdemeanor for a second offense.
- (3) A Class I felony for a third or subsequent offense."

SECTION 2. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 3:26 p.m. on the 27th day of July, 2006.

S.B. 264

Session Law 2006-170

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE
RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE
AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

Whereas, the President Pro Tempore of the Senate and the Speaker of the House of Representatives have made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. PRESIDENT PRO TEMPORE'S RECOMMENDATIONS

SECTION 1.1. Ken Morehead of Durham County is appointed to the Acupuncture Licensing Board for a term expiring on June 30, 2009.

SECTION 1.2.(a) James R. Britt of Duplin County is appointed to the North Carolina Agricultural Finance Authority for a term expiring on July 1, 2008, to fill the unexpired term of Deborah Johnson.

SECTION 1.2.(b) Frank Timberlake of Wake County is appointed to the North Carolina Agricultural Finance Authority for a term expiring on July 1, 2009.

SECTION 1.3. Gladys Brooks of Buncombe County is appointed to the Board of Directors of the North Carolina Arboretum for a term expiring on June 30, 2010.

SECTION 1.4. Effective July 1, 2005, Michelle E. Piette of Wake County and Robert J. Casmus of Rowan County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms expiring on June 30, 2008.

SECTION 1.5. Margaret Ann Biddle of Wake County and Beth Rector of Columbus County are appointed to the Child Care Commission for terms expiring on June 30, 2008.

SECTION 1.6. Jerry Wright of Currituck County and Claudette Weston of Forsyth County are appointed to the Clean Water Management Trust Fund Board of Trustees for terms expiring on July 1, 2010.

SECTION 1.7. Valoree Eikinas of Wake County and Deborah Simpson of Cumberland County are appointed to the North Carolina Code Officials Qualification Board for terms expiring on June 30, 2010.

SECTION 1.8. Julianne Territo Stewart of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2009.

SECTION 1.9. R. Mitchell Tyler of Columbus County is appointed to the Disciplinary Hearing Committee of the North Carolina State Bar for a term expiring on June 30, 2009.

SECTION 1.10. Effective September 1, 2006, the Honorable Julia Boseman of New Hanover County, the Honorable Valerie Asbell of Hertford County, Laura Powell of Rutherford County, John Guard of Pitt County, and Patricia Melvin of New Hanover County are appointed to the Domestic Violence Commission for terms expiring on August 31, 2008.

SECTION 1.11. Effective January 1, 2006, Stephen M. Taylor of Dare County is appointed to the North Carolina Emergency Medical Services Advisory Council for a term expiring on December 31, 2009.

SECTION 1.12. Effective January 1, 2007, Jon Hamm of Wake County is appointed to the e-NC Authority Commission for a term expiring on December 31, 2007.

SECTION 1.13. Effective October 1, 2006, Dr. John Arey of Mecklenburg County is appointed to the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors for a term expiring on September 30, 2010.

SECTION 1.14. Effective July 24, 2006, Talmadge Jones of Dare County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring on June 30, 2010.

SECTION 1.15. Lorene Roberson of Nash County, Kathleen Beetham of Wake County, and James Sewell of Wake County are appointed to the North Carolina Interpreter and Transliterator Licensing Board for terms expiring on June 30, 2009.

SECTION 1.16. Ken Burkel of Forsyth County is appointed to the License to Give Trust Fund Commission for a term expiring on April 7, 2007, to fill the unexpired term of Rommie Ray.

SECTION 1.17. Effective January 1, 2007, Ronald Cox of Wake County is appointed to the North Carolina Locksmith Licensing Board for a term expiring on December 31, 2009.

SECTION 1.18. Effective October 1, 2006, Michael F. Perkins of Wake County is appointed to the North Carolina Manufactured Housing Board for a term expiring on September 30, 2009.

SECTION 1.19. Nancy Toner Weinberger of Franklin County and Laura Allen of Rutherford County are appointed to the North Carolina Board of Massage and Bodywork Therapy for terms expiring on June 30, 2009.

SECTION 1.20.(a) Dr. Richard Brunstetter of Forsyth County is appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for a term expiring on June 30, 2008, to fill the unexpired term of Dr. Stephen Buie.

SECTION 1.20.(b) Tom Ryba of Wake County is appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for a term expiring on June 30, 2009.

SECTION 1.21. Judy Seamon of Carteret County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring on June 30, 2009.

SECTION 1.22. Cody Grasty of Haywood County is appointed to the North Carolina Parks and Recreation Authority for a term expiring on June 30, 2009.

SECTION 1.23. Steve Johnson of Wake County, Berkley Blanks of Guilford County, and Richard Jenkins of Nash County are appointed to the Private Protective Services Board for terms expiring on June 30, 2009.

SECTION 1.24. Effective January 1, 2007, the Honorable Stan Bingham of Davidson County and Suzanne Clifton of Wake County are appointed to the North Carolina Professional Employer Organization Advisory Council for terms expiring on December 31, 2009.

SECTION 1.25. Effective November 1, 2006, Ralph D. Webb of Edgecombe County and Dr. Karl Karlson of Forsyth County are appointed to the North Carolina Respiratory Care Board for terms expiring on October 31, 2009.

SECTION 1.26. William Kealy, Bobby Owens, and Joann Williams, all of Dare County, are appointed to the Roanoke Island Commission for terms expiring on June 30, 2008.

SECTION 1.27. Terry Turner of New Hanover County is appointed to the State Building Commission for a term expiring on June 30, 2009.

SECTION 1.28.(a) Lonnie Player of Cumberland County is appointed to the State Judicial Council for a term expiring on December 31, 2008, to fill the unexpired term of Robert Ray.

SECTION 1.28.(b) Effective January 1, 2007, Jane Griffin of Martin County is appointed to the State Judicial Council for a term expiring on December 31, 2010.

SECTION 1.29. Laura Wilson of New Hanover County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2008.

SECTION 1.30. Effective August 15, 2006, Walter Lee Crouch, Jr., of New Hanover County, John Bridgeman of Gaston County, I. Jarvis Martin of Durham County, and Frank Traywick of Gaston County are appointed to the Commission on State Property for terms expiring on August 14, 2008.

SECTION 1.31. William Tesh of Guilford County is appointed to the Structural Pest Control Committee for a term expiring on June 30, 2010.

SECTION 1.32. David Turpin of Wake County is appointed to the North Carolina Substance Abuse Professional Practice Board for a term expiring on June 30, 2010.

SECTION 1.33. Pam Silberman of Durham County and Marion Sullivan of Orange County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring on June 30, 2008.

SECTION 1.34. Dr. Mike Davidson of Wake County is appointed to the North Carolina Veterinary Medical Board for a term expiring on June 30, 2011.

SECTION 1.35. Belinda Ferree of Randolph County is appointed to the Well Contractors Certification Commission for a term expiring on June 30, 2009.

SECTION 1.36. Dell Murphy of Duplin County is appointed to the North Carolina Wildlife Resources Commission for a term expiring on April 24, 2007, to fill the unexpired term of John Pechmann.

SECTION 1.37. Christi Lynn Derreberry of Mecklenburg County, Slayton Stewart of Wilkesboro, and David Corn of Yadkin County are appointed to the Wireless 911 Board for terms expiring on June 30, 2010.

PART II. SPEAKER'S RECOMMENDATIONS

SECTION 2.1.(a) Ray Harvel of Moore County is appointed to the North Carolina Agricultural Finance Authority for a term expiring on June 30, 2009.

SECTION 2.1.(b) Alfred James Worley, Jr., of Columbus County is appointed to the North Carolina Agricultural Finance Authority for a term expiring on June 30, 2007, to fill the unexpired term of Stan Crowe.

SECTION 2.2. Guy J. Phillips of Jackson County and Darrell Furr of Stanly County are appointed to the Alarm Systems Licensing Board for terms expiring on June 30, 2009.

SECTION 2.3. Carolyn Taylor of Haywood County is appointed to the Board of Directors of the North Carolina Arboretum for a term expiring on June 30, 2010.

SECTION 2.4. John Kirkland of Craven County is appointed to the State Building Commission for a term expiring on June 30, 2009.

SECTION 2.5. Lynn Agee of Moore County and Lynn K. Policastro of Wake County are appointed to the Child Care Commission for terms expiring on June 30, 2008.

SECTION 2.6.(a) Karen Cragolin of Buncombe County and the Honorable Charles Johnson of Pitt County are appointed to the Clean Water Management Trust Fund Board of Trustees for terms expiring on July 1, 2010.

SECTION 2.6.(b) Dr. Norman C. Camp III of Wake County is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on July 1, 2007, to fill the unexpired term of C. Leroy Smith.

SECTION 2.6.(c) C. L. "Rance" Henderson of Burke County is appointed to the Clean Water Management Trust Fund Board of Trustees for a term expiring on July 1, 2008, to fill the unexpired term of Anthony Lathrop.

SECTION 2.7. Debbie Chafin of Davie County is appointed to the North Carolina Board of Cosmetic Art Examiners for a term expiring on June 30, 2009.

SECTION 2.8. Miriam Peterson of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring on June 30, 2009.

SECTION 2.9. Rebecca Brownlee of Wake County and Michael Houser of Wake County are appointed to the Disciplinary Hearing Commission of the North Carolina State Bar for terms expiring on June 30, 2009.

SECTION 2.10. Effective October 1, 2006, Edward C. Hay, Jr., of Buncombe County is appointed to the Dispute Resolution Commission for a term expiring on September 30, 2009.

SECTION 2.11. Effective September 1, 2006, Lee Settle of Moore County, Sheriff Sid Causey of New Hanover County, Julia B. Freeman of Haywood County, the Honorable Marian N. McLawhorn of Pitt County, Aaron Alton Cox of Bladen County, Elyse Hillegass of Gaston County, and Jo M. Liles of Hertford County are appointed to the Domestic Violence Commission for terms expiring on August 31, 2008.

SECTION 2.12. Elizabeth Fisher of New Hanover County is appointed to the North Carolina Board of Electrolysis Examiners for a term expiring on August 31, 2007, to fill the unexpired term of Trudy Brown.

SECTION 2.13. Effective December 1, 2006, H. Eugene Miller, Jr., of New Hanover County is appointed to the Economic Investment Committee for a term expiring on November 30, 2008.

SECTION 2.14. The Honorable Marvin W. Lucas of Cumberland County is appointed to the Education Commission of the States for a term expiring on June 30, 2007.

SECTION 2.15. Effective January 1, 2007, the Honorable Thomas E. Wright of New Hanover County is appointed to the North Carolina Emergency Medical Services Advisory Council for a term expiring on December 31, 2010.

SECTION 2.16. Effective January 1, 2007, Herbert Crenshaw of Wake County is appointed to the e-NC Authority for a term expiring on December 31, 2007.

SECTION 2.17. Donnie W. Brewer of Pitt County is appointed to the Environmental Management Commission for a term expiring on June 30, 2008.

SECTION 2.18. Effective October 1, 2006, Reverend Russell S. Jones, Th.D., of Buncombe County and Dr. James Ray Israel of Forsyth County are appointed to the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors for terms expiring on September 30, 2010.

SECTION 2.19. Effective September 1, 2006, Constance Stancil of Durham County, Lillie M. Brown-Doggett of Guilford County, Bryan Coyle of Wake County,

Scott Dedmon of Buncombe County, and E.G. "Ned" Fowler of Watauga County are appointed to the North Carolina Housing Partnership for terms expiring on August 31, 2009.

SECTION 2.20. Ray Littleturtle of Robeson County is appointed to the North Carolina State Commission of Indian Affairs for a term expiring on June 30, 2008.

SECTION 2.21. Effective January 1, 2007, John E. Olsen of Moore County is appointed to the State Judicial Council for a term expiring on December 31, 2010.

SECTION 2.22. Effective January 1, 2007, Jeanette K. Poole of Forsyth County, Ginny Williams of Beaufort County, Dr. John Moskop of Pitt County, and Judith Brunger of Wake County are appointed to the Licensed to Give Trust Fund Commission for terms expiring on December 31, 2008.

SECTION 2.23. Effective January 1, 2006, Hosie King, Jr., of Cumberland County is appointed to the North Carolina Locksmith Licensing Board for a term expiring on December 31, 2009.

SECTION 2.24. Wayne Carpenter of Johnston County, Dell Averette of Wake County, and Katrina F. Bryant of Camden County are appointed to the North Carolina Manufactured Housing Board for terms expiring on June 30, 2009.

SECTION 2.25. Jaime A. Huffman of Buncombe County and Jean E. Middleswarth of Forsyth County are appointed to the North Carolina Board of Massage and Bodywork Therapy for terms expiring on June 30, 2009.

SECTION 2.26. Dr. Marvin S. Swartz of Durham County and Ellen S. Holliman of Davidson County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring on June 30, 2009.

SECTION 2.27. Effective July 1, 2005, J. Allen Fine of Orange County is appointed to the North Carolina Museum of Art Board of Trustees for a term expiring on June 30, 2007.

SECTION 2.28. The Honorable Frederick Yates of Perquimans County and Gene Minton of Halifax County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring on June 30, 2008.

SECTION 2.29. Nancy M. Short of Durham County and Linda Lockhart of Martin County are appointed to the North Carolina Center for Nursing Board of Directors for terms expiring on June 30, 2009.

SECTION 2.30. Lisa Weston of Gaston County is appointed to the North Carolina Parks and Recreation Authority for a term expiring on June 30, 2009.

SECTION 2.31. Jeff Etheridge of Columbus County is appointed to the North Carolina State Ports Authority for a term expiring on June 30, 2008.

SECTION 2.32. William F. Booth of Wake County and David Grimes of Wayne County are appointed to the Private Protective Services Board for terms expiring on June 30, 2009.

SECTION 2.33. Effective January 1, 2007, the Honorable Mitchell S. Setzer of Catawba County is appointed to the North Carolina Professional Employer Organization Advisory Council for a term expiring on December 31, 2009.

SECTION 2.34. Janet Pittard of Wake County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term expiring on June 30, 2007, to fill the unexpired term of Gene Hoots.

SECTION 2.35. Effective November 1, 2006, William Croft of Hoke County and Dr. Thomas Goodin of Catawba County are appointed to the North Carolina Respiratory Care Board for terms expiring on October 31, 2009.

SECTION 2.36. William P. Massey of Buncombe County, Saint Claire Basnight of Dare County, and Joseph M. Bryan, Jr., of Guilford County are appointed to the Roanoke Island Commission for terms expiring on June 30, 2008.

SECTION 2.37.(a) The Honorable John B. Lewis, Jr., of Pitt County and Mary Beach Shuping of Burke County are appointed to the Rules Review Commission for terms expiring on June 30, 2008.

SECTION 2.37.(b) Judson A. Welborn of Wake County is appointed to the Rules Review Commission for a term expiring on June 30, 2007, to fill the unexpired term of Dana Simpson.

SECTION 2.38. The Honorable Harold Brubaker of Randolph County is appointed to the Southern Dairy Compact Commission for a term expiring on June 30, 2010.

SECTION 2.39. Effective August 15, 2006, Patrick H. Bell of Gaston County, W. Thurston Debnam, Jr., of Wake County, Ossie Smith of Granville County, and Robert Tweed of Moore County are appointed to the Commission on State Property for terms expiring on August 14, 2008.

SECTION 2.40. Harold Allen Langley of Cleveland County is appointed to the Structural Pest Control Committee for a term expiring on June 30, 2010.

SECTION 2.41. Reverend Richard Henderson of Vance County is appointed to the North Carolina Substance Abuse Professionals Practice Board expiring on June 30, 2010.

SECTION 2.42. Linda Rouse Sutton of Lenoir County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring on June 30, 2008.

SECTION 2.43. Nancy K. Robinson of Lee County is appointed to the North Carolina Veterinary Medical Board for a term expiring on June 30, 2011.

SECTION 2.44. William P. Tatum of Lee County and Linda Willey of Dare County are appointed to the UNC Umstead Review Panel for terms expiring on April 30, 2009.

SECTION 2.45. Effective September 1, 2006, Dr. Hal C. Herring, Jr., of Robeson County is appointed to the Governor's Commission on Early Childhood Vision Care for a term expiring on August 31, 2009.

SECTION 2.46. Effective January 1, 2007, the Honorable Lucy Allen of Franklin County and the Honorable E. Nelson Cole of Rockingham County are appointed to the Virginia-North Carolina Interstate High Speed Rail Compact for terms expiring on December 31, 2008.

SECTION 2.47. Gregory E. Bright of Franklin County is appointed to the Well Contractors Certification Commission for a term expiring on June 30, 2009.

SECTION 2.48. William Craige of Mecklenburg County, David Dodd of Cleveland County, and Anand Ghandi of Mecklenburg County are appointed to the Wireless 911 Board for terms expiring on June 30, 2010.

PART III. EFFECTIVE DATE

SECTION 3.1. The headings to the parts and sections of this act are a convenience to the reader and are for reference only.

SECTION 3.2. Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification of this act.

SECTION 3.3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law on the date it was ratified.

S.B. 350

Session Law 2006-171

AN ACT AFFECTING THE REGULATION OF ABANDONED OR JUNKED MOTOR VEHICLES IN THE MUNICIPALITIES OF AHOSKIE, CRAMERTON, FARMVILLE, AND LAGRANGE; TO PROVIDE THAT HIGH POINT CITY ELECTIONS SHALL BE HELD IN THE EVEN-NUMBERED YEARS AND DECIDED ON A PLURALITY BASIS; TO AMEND THE CHARTER OF THE TOWN OF MCFARLAN TO PROVIDE FOUR-YEAR TERMS FOR THE MAYOR AND BOARD OF COMMISSIONERS; TO CONFIRM THE APPLICABILITY OF A 1961 LOCAL ACT TO ELECTIONS FOR THE BERTIE COUNTY BOARD OF EDUCATION AS HAS BEEN THE PROCEDURE FOLLOWED BY THE BOARD AND ELECTION OFFICIALS; TO REPEAL A LIMIT ON THE NUMBER OF TERMS A MEMBER OF THE SCOTLAND COUNTY BOARD OF EDUCATION MAY SERVE; TO ALLOW THE SANFORD-LEE COUNTY AIRPORT AUTHORITY TO ADD AN ADDITIONAL MEMBER THAT IS AN EX OFFICIO VOTING MEMBER; PROVIDING THAT THE TOWNS OF MARSHVILLE AND WINGATE MAY EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING ONE MILE FROM THEIR RESPECTIVE LIMITS WITHOUT THE APPROVAL OF THE UNION COUNTY BOARD OF COMMISSIONERS AND PROVIDING FOR A DELAY OF THE MONROE CITY REFERENDUM AUTHORIZED BY S.L. 2005-261; AND TO EXEMPT THE TOWN OF BLOWING ROCK FROM CERTAIN REQUIREMENTS FOR PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2005-10 as rewritten by S.L. 2006-15 reads as rewritten:

"**SECTION 3.** Section 1 of this act applies only to the City of Henderson and the Towns of Ahoskie, Cramerton, Farmville, LaGrange, Matthews, Mint Hill, and Louisburg. Section 2 of this act applies only to the Towns of Ahoskie, Cramerton, Farmville, LaGrange, Mint Hill and Louisburg."

SECTION 2.(a) Section 3.1 of the Charter of the City of High Point, being Chapter 501 of the 1979 Session Laws, as amended by Ordinance Number 86-7 under Part 4 of Article 5 of Chapter 160A of the General Statutes, reads as rewritten:

"Sec. 3.1. Method of election. Regular municipal elections shall be held in the city biennially in ~~odd-numbered~~ even-numbered years, and shall be conducted in accordance with state law governing municipal elections. The mayor and members of the council shall be elected by the ~~nonpartisan primary and election method provided for in G.S. 163-294.~~ nonpartisan plurality election method provided for in G.S. 163-292."

SECTION 2.(b) No regular election shall be conducted in the City of High Point in 2007, and the terms of the mayor and council members elected in 2005 are

extended until the organizational meeting after the 2008 regular municipal election held in accordance with Section 2(a) of this act.

SECTION 3. Section 4 of the Charter of the Town of McFarlan, being Chapter 102, Private Laws of 1885, as rewritten by Section 4 of Chapter 771 of the Session Laws of 1947, reads as rewritten:

"Sec. 4. That hereafter the officers of said town shall consist of a mayor and five commissioners, and an election for said officers shall be held ~~on the first Tuesday after the first Monday in May, 1947, and biennially in 2007 and quadrennially thereafter,~~ and shall be conducted in accordance with the general municipal election laws as set out in ~~Article 3 of Chapter 160 Chapter 163~~ of the General Statutes of North Carolina. Those elected in 2007 and thereafter shall serve four-year terms."

SECTION 5.(a) Except as modified by this act, pursuant to Article 5 of Chapter 115C of the General Statutes, the Bertie County Board of Education consists of five members elected in nonpartisan elections in even-numbered years. As provided in Chapter 764 of the Session Laws of 1961, and as has been the practice since that time, elections shall be by residency districts. That is, candidates for each of the five seats, and board members elected to those seats, shall reside in particular districts, but all seats shall be voted upon by all eligible voters in the county. The five districts are:

- District 1 – Windsor Township.
- District 2 – Merry Hill and Whites Townships.
- District 3 – Colerain and Mitchell Townships.
- District 4 – Roxabel and Woodville Townships.
- District 5 – Snakebite and Indian Woods Townships.

SECTION 5.(b) As provided in Section 3 of Chapter 764 of the Session Laws of 1961, and as has been the practice since that time, board members shall serve staggered, four-year terms. The board members representing Districts 2, 3, and 4 shall be elected in 2006 and every four years thereafter. The board members representing Districts 1 and 5 shall be elected in 2008 and every four years thereafter.

SECTION 5.(c) Except as provided in this section, members of the Bertie County Board of Education shall be elected according to general State law.

SECTION 5.(d) This section is intended to codify and confirm the election method that has been in place since 1961.

SECTION 5.(e) Elections conducted before the effective date of this section using residency districts and staggered terms for election of members of the Bertie County Board of Education are ratified and shall be considered lawful.

SECTION 6. Section 4(e) of Chapter 707 of the Session Laws of 1963, as rewritten by Chapter 306 of the 1973 Session Laws, is repealed.

SECTION 7.(a) Section 1 of Chapter 903 of the 1991 Session Laws reads as rewritten:

"**Section 1.** There is hereby created an airport authority to be known as the "Sanford-Lee County Regional Airport Authority" which shall be a body politic and corporate. The said authority shall be composed of ~~six members, threes~~seven members; two appointed by the Board of Commissioners for of the County of Lee and three Lee, two by the Board of Aldermen-City Council of the City of Sanford~~Sanford~~; and three ex officio voting members: the Sanford City Manager, the Lee County Manager, and the Lee County Economic Development Director. The said members shall be allowed a reasonable compensation as determined by the joint action of the ~~Board of Aldermen City Council~~ of the City of Sanford and the Board of Commissioners for the County of Lee, and shall be paid actual expenses incurred in the transaction of business at the

instance of the authority; provided, however, that no full-time employee of the city or county, or an elected member of either the ~~Board of Aldermen~~ City Council of the City of Sanford or the ~~board~~ Board of Commissioners of the County of Lee shall be paid for his or her services in connection with said authority, but shall be entitled only to reimbursement of actual expenses."

SECTION 7.(b) This section becomes effective July 1, 2006.

SECTION 8.(a) G.S. 160A-360(e) is repealed.

SECTION 8.(b) This section applies to the Towns of Marshville and Wingate only.

SECTION 8.(c) No town exercising extraterritorial jurisdiction under this section may do so without 180 days notification to the board of county commissioners of the county in which the town lies, unless that board of county commissioners agrees to an earlier date.

SECTION 9. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 or 2007 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

[] For [] Against

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe.' "

SECTION 10. Notwithstanding G.S. 143-128, 143-129, and 143-132, the Town of Blowing Rock may use the design-build method of construction for the public parking facility that shall be located adjacent to the proposed Blowing Rock Art & History Museum on a lot bounded by Main Street, Chestnut Street, and Wallingford Street in downtown Blowing Rock. Notwithstanding any provision of law, the Town of Blowing Rock may award the contract in its sole discretion.

SECTION 11. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law on the date it was ratified.

H.B. 853

Session Law 2006-172

AN ACT TO PROVIDE FOR THE PURCHASE OF CREDITABLE SERVICE FOR PERIODS OF SERVICE UNDER THE OPTIONAL RETIREMENT PROGRAM FOR STATE INSTITUTIONS OF HIGHER EDUCATION AND TO INCLUDE THE NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS

WITHIN THE OPTIONAL RETIREMENT PROGRAM FOR THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-5 is amended by adding a new subsection to read:

"(ooo) Credit at Full Cost for Service with The University of North Carolina During Which a Member Participated in the Optional Retirement Program. – Notwithstanding any other provisions of this Chapter, a member, upon the completion of five years of membership service, may purchase creditable service for periods of employment with The University of North Carolina during which the member participated in the Optional Retirement Program as provided for in G.S. 135-5.1, provided that the member is not receiving, and is not entitled to receive, any retirement benefits resulting from this employment. The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities, and shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

SECTION 2. The catch line of G.S. 135-5.1 reads as rewritten:

"§ 135-5.1. Optional retirement program for ~~State institutions of higher education.~~The University of North Carolina."

SECTION 3. G.S. 135-5.1(a) reads as rewritten:

"(a) An Optional Retirement Program provided for in this section is authorized and established and shall be implemented by the Board of Governors of The University of North Carolina. The Optional Retirement Program shall be underwritten by the purchase of annuity contracts, which may be both fixed and variable contracts or a combination thereof, or financed through the establishment of a trust, for the benefit of participants in the Program. Participation in the Optional Retirement Program shall be limited to ~~university~~ University personnel who are eligible for membership in the Teachers' and State Employees' Retirement Program and who are:

- (1) Administrators and faculty of The University of North Carolina with the rank of instructor or above;
- (2) The President and employees of The University of North Carolina who are appointed by the Board of Governors on recommendation of the President pursuant to G.S. 116-11(4), 116-11(5), and 116-14 or who are appointed by the Board of Trustees of a constituent institution of The University of North Carolina upon the recommendation of the Chancellor pursuant to G.S. 116-40.22(b);
- (3) Nonfaculty instructional and research staff who are exempt from the State Personnel Act, as defined by the provisions of G.S. ~~126-5(c1)(8);~~ 126-5(c1)(8), and the faculty of the North Carolina School of Science and Mathematics; and

- (4) Field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees' Retirement System pursuant to G.S. 135-3(1), who in any of the cases described in this subsection (i) had been members of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought membership as required in subsection (b), below. Under the Optional Retirement Program, the State and the participant shall contribute, to the extent authorized or required, toward the purchase of such contracts or deposited in such trust on the participant's behalf."

SECTION 4. Sections 2 and 3 of this act become effective July 1, 2007, and Section 3 of this act applies only to eligible persons who are employees as of July 1, 2007, or who are employed thereafter. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:41 p.m. on the 1st day of August, 2006.

H.B. 1248

Session Law 2006-173

AN ACT AMENDING THE IDENTITY THEFT PROTECTION ACT OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding the following new subsection to read:

"(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75-65."

SECTION 2. G.S. 132-1.10(b)(5) reads as rewritten:

"(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

...

- (5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. "Identifying information", as used in this subdivision, shall have the same meaning as in G.S. 14-113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records. Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying

information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted."

SECTION 3. G.S. 132-1.10(d) reads as rewritten:

"(d) No person preparing or filing a document to be recorded or filed in the official records ~~by of~~ the register of deeds, the Department of the Secretary of State, or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation."

SECTION 4. G.S. 132-1.10(e) reads as rewritten:

"(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the register of ~~deeds, deeds~~ or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information."

SECTION 5. G.S. 132-1.10(f) reads as rewritten:

"(f) Any person has the right to request that the Department of the Secretary of State, a register of deeds or clerk of court remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or court's Internet Website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or court to display public records by the Department of the Secretary of State, the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the Department of the Secretary of State, the register of deeds, the clerk of court, their staff, or upon order of the court. The Department of the Secretary of State, the register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if

impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation."

SECTION 6. G.S. 132-1.10(g) reads as rewritten:

"(g) A The Department of the Secretary of State, a register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

- (1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.
- (2) Any person has a right to request the Department of the Secretary of State, a register of deeds or clerk of court to remove, from an image or copy of an official record placed on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the Department of the Secretary of State, the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation."

SECTION 7. G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to the Department of the Secretary of State, a register of deeds or clerk of court or to ~~his or her agent~~their agents for any action related to provisions of this section or for any claims or damages that might result from a social

security number or other identifying information on the public record or on the Department of the Secretary of State's, a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by the Department of the Secretary of State, a register of deeds or clerk of court."

SECTION 8. The provisions of G.S. 132-1.10(b)(5) shall not apply to identifying information accessible on the Internet Web site of the Department of the Secretary of State or by magnetic tapes, electronic data feeds, or electronic file transfers of all records or updates of records on file with the Secretary of State until July 1, 2007. Notwithstanding the exemption provided by this section, the Department of the Secretary of State shall, whenever funds are made available, make it a priority to first remove identifying information contained in Uniform Commercial Code financing statements filed with the Department of the Secretary of State under Chapter 25 of the General Statutes no later than June 30, 2007.

SECTION 9. The Department of the Secretary of State shall study the alternatives and costs for redacting identifying information contained in the records of the Department of the Secretary of State, including the Internet Web site of the Department, and shall report the results of its study to the Office of State Budget and Management and to the House and Senate cochairs of the Joint Appropriations Subcommittee on General Government on or before February 1, 2007. This study shall focus on the most expeditious, cost-effective method of redacting identifying information on or before January 1, 2007.

SECTION 10. Section 1 of this act becomes effective October 1, 2006. Sections 5 through 7 of this act are effective when the act becomes law and expire on July 1, 2007. The remainder of this act is effective when the act becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:52 p.m. on the 1st day of August, 2006.

S.B. 837

Session Law 2006-174

AN ACT TO REQUIRE THAT RETIRED EMPLOYEES HAVE AT LEAST TWENTY YEARS OF RETIREMENT BENEFIT SERVICE CREDIT IN ORDER TO QUALIFY FOR BENEFITS UNDER THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN ON A NONCONTRIBUTORY BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.2(a)(2) reads as rewritten:

"§ 135-40.2. **Eligibility.**

(a) The following persons are eligible for coverage under the Plan, on a noncontributory basis, subject to the provisions of G.S. 135-40.3:

...

- (2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. For employees first hired on and after October 1, 2006, and members of the General Assembly first taking office on and after February 1, 2007,

future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision."

SECTION 2. G.S. 135-40.2 is amended by adding the following new subsection to read:

"(a3) Subject to the provisions of G.S. 135-40.3, employees and members of the General Assembly with 10 but less than 20 years of retirement service credit shall be eligible for coverage under the Plan on a partially contributory basis, provided the employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual retirees shall pay the balance of the total noncontributory premiums not paid by the State."

SECTION 3. G.S. 135-40.2(b) is amended by adding a new subdivision to read:

"(11a) Retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit, provided the teachers and State employees were first hired on or after October 1, 2006, and the members first took office on or after February 1, 2007."

SECTION 4. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:53 p.m. on the 1st day of August, 2006.

H.B. 1327

Session Law 2006-175

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-270.4(e) reads as rewritten:

"(e) Nothing in this Article shall be construed to prevent qualified members of other professional groups licensed or certified under the laws of this State from rendering services ~~consistent with their professional training and code of ethics, within the scope of practice, as defined in the statutes regulating those professional practices,~~ provided they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed, certified, or registered to practice psychology."

SECTION 2. Article 18A of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-270.22. Criminal history record checks of applicants for licensure and licensees.

(a) The Board may request that an applicant for licensure or reinstatement of a license or that a licensed psychologist or psychological associate currently under investigation by the Board for allegedly violating this Article consent to a criminal history record check. Refusal to consent to a criminal history record check may

constitute grounds for the Board to deny licensure or reinstatement of a license to an applicant or take disciplinary action against a licensee, including revocation of a license. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant or licensee to be checked, a form signed by the applicant or licensee consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

The Board shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for the cost of conducting the criminal history record check.

(b) Limited Immunity. – The Board, its officers and employees, acting reasonably and in compliance with this section, shall be immune from civil liability for denying licensure or reinstatement of a license to an applicant or the revocation of a license or other discipline of a licensee based on information provided in the applicant's or licensee's criminal history record check."

SECTION 3. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.16. Criminal record checks of applicants for licensure and licensees.

The Department of Justice may provide to the North Carolina Psychology Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license to practice psychology or a licensed psychologist or psychological associate under Article 18A of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee 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 applicant's or licensee's fingerprints 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 Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge each applicant or licensee a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:55 p.m. on the 1st day of August, 2006.

S.B. 571

Session Law 2006-176

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO REPORT ON THE ROLE SCHOOL COUNSELORS PLAY IN PROVIDING DROPOUT PREVENTION AND INTERVENTION SERVICES TO STUDENTS IN MIDDLE AND HIGH SCHOOL AND ON THE STATE BOARD'S IMPLEMENTATION OF ITS POLICY REGARDING SCHOOL COUNSELORS.

The General Assembly of North Carolina enacts:

SECTION 1. Research shows that school counselors can provide effective services to students that encourage them to stay in school, succeed in school, and graduate from high school. Research also shows that middle school is a critical time for students who are at risk of dropping out of school. The General Assembly currently provides funding that local school administrative units may use to hire school counselors; it is unclear, however, what role school counselors play in providing effective and efficient dropout prevention and intervention services to students in middle and high school. The General Assembly needs additional information to determine whether adjustments should be made in funding for school counselors or assignment of duties to school counselors; therefore, the State Board of Education shall report the following information to the Joint Legislative Education Oversight Committee prior to March 15, 2007.

- (1) The counselor-to-student ratio in schools with a sixth grade or higher grade;
- (2) The source of funds used for each of these counselors;
- (3) A review and analysis of the counselors' primary duties by school;
- (4) A summary and description of school-based dropout prevention and intervention services provided directly to students in the sixth grade and higher grades, including the role of school counselors in providing the services; and
- (5) The number of school counselors and other individuals per local school administrative unit whose primary responsibility is to provide school-based dropout prevention and intervention services and the percentage of their time spent providing these services.

SECTION 2. The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to November 1, 2007, on the implementation of State Board Policy QP-C-012, Policy Delineating the Job Description and Performance Criteria for School Counselors.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:57 p.m. on the 1st day of August, 2006.

S.B. 1289

Session Law 2006-177

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

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

- (1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.
- (2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.
- (3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

- (1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.
- (2) The motor vehicle operator's parent, legal guardian or spouse.

(e) Penalty. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars (\$25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

- (1) The permit holder must be in possession of the permit.
- (2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
- (3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
- (4) After the first six months after issuance, the permit holder may drive at any time.
- (5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be

restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

- (6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area."

SECTION 3. G.S. 20-11(d) reads as rewritten:

"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

- (1) Has held a limited learner's permit issued by the Division for at least 12 months.
- (2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.
- (3) Passes a road test administered by the Division.
- (4) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 4. G.S. 20-11(e) reads as rewritten:

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

- (1) The license holder shall be in possession of the license.
- (2) The license holder may drive without supervision in any of the following circumstances:
 - a. From 5:00 a.m. to 9:00 p.m.
 - b. When driving to or from work.
 - c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.
- (3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.
- (4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.
- (5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

- (6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

- (1) Has held a limited provisional license issued by the Division for at least six months.
- (2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.
- (3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. G.S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(l) reads as rewritten:

"(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars (\$25.00). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (e) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 5:58 p.m. on the 1st day of August, 2006.

H.B. 2208

Session Law 2006-178

AN ACT TO REPEAL THE REQUIREMENT THAT CERTAIN STATUTORY CRITERIA RELATED TO GRANTS FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR WASTEWATER AND STORMWATER COLLECTION AND TREATMENT PROJECTS HAVE PRIORITY OVER CRITERIA ESTABLISHED BY THE BOARD OF TRUSTEES OF THE CLEAN WATER MANAGEMENT TRUST FUND, TO CLARIFY THE AUTHORITY OF THE BOARD OF TRUSTEES WITH RESPECT TO MATCH REQUIREMENTS IN CONNECTION WITH GRANT AWARDS, AND TO ESTABLISH TERM LIMITS FOR THE BOARD OF TRUSTEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-254 reads as rewritten:

"§ 113A-254. Grant requirements.

(a) Eligible Applicants. – Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.
- (2) A local government unit.
- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(a1) Criteria. – The criteria developed by the Trustees under G.S. 113A-256 apply to grants made under this Article. The common criteria for water projects set in G.S. 159G-23 and the criteria set out in this section also apply to wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects. ~~The common criteria set in G.S. 159G-23 have priority over the criteria set under this Article for wastewater collection system projects, wastewater treatment works projects, and stormwater quality projects.~~ An application for a wastewater collection system project or a wastewater treatment works project that serves an economically distressed local government unit has priority.

(b) Matching Requirement. – The Board of Trustees shall establish matching requirements for grants awarded under this Article. ~~The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded.~~ This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) Restriction. – No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.

(d) Wastewater Limits. – A wastewater collection system project or a wastewater treatment works project is eligible for a grant under this Article only if it is a high-unit-cost project, as defined in G.S. 159G-20. A grant made under this Article for a wastewater collection system project or a wastewater treatment works project is subject to the cost limits and recipient limits set in G.S. 159G-36 for a grant awarded from the Wastewater Reserve.

(e) Stormwater Limits. – The amount of a grant awarded under this Article for a stormwater quality project may not exceed the construction costs of the project. The total amount of grants awarded under this Article to the same recipient for stormwater

quality projects for a fiscal year may not exceed the limit set in G.S. 159G-36(c)(1) for grants to the same recipient from the Wastewater Reserve.

(f) **Withdrawal.** – An award of a grant under this Article is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant."

SECTION 2. G.S. 113A-255 is amended by adding a new subsection to read:

"(b2) **Limitation on Length of Service.** – No member of the Board of Trustees shall serve more than two consecutive four-year terms or a total of 10 years."

SECTION 3. Sections 1 and 3 of this act are effective retroactively to 1 January 2006. Section 2 of this act is effective retroactively to 1 July 2006. This act shall not apply to any person who is a member of the Board of Trustees of the Clean Water Management Trust Fund on 30 June 2006.

In the General Assembly read three times and ratified this the 17th day of July, 2006.

Became law upon approval of the Governor at 6:00 p.m. on the 1st day of August, 2006.

S.B. 488

Session Law 2006-179

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR SIMPLE ASSAULT OR BATTERY ON A HANDICAPPED PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-32.1(f) reads as rewritten:

"(f) Any person who commits a simple assault or battery upon a handicapped person is guilty of a ~~Class 1~~ Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 6:01 p.m. on the 1st day of August, 2006.

S.B. 1187

Session Law 2006-180

AN ACT TO SPECIFY THE TRYON PALACE HISTORIC SITES AND GARDENS FUND AS A SPECIAL, INTEREST-BEARING TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-21.1 reads as rewritten:

"§ **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~~ special, interest-bearing, and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and

G.S. 147-69.3. 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."

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 6:02 p.m. on the 1st day of August, 2006.

H.B. 1120

Session Law 2006-181

AN ACT TO OFFICIALLY ACKNOWLEDGE THE IMPORTANCE OF NEIGHBORHOOD CRIME WATCH PROGRAMS AND TO ESTABLISH A CRIMINAL PENALTY FOR HARASSMENT OF A MEMBER OF A NEIGHBORHOOD CRIME WATCH PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-212.2. Neighborhood crime watch programs.

A county may establish neighborhood crime watch programs within the county to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials."

SECTION 2. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-289.2. Neighborhood crime watch programs.

A city may establish neighborhood crime watch programs within the city to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials."

SECTION 3. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-226.2. Harassment of participant in neighborhood crime watch program.

Any person who willfully threatens or intimidates an identifiable member or a resident in the same household as the member of a neighborhood crime watch program for the purpose of intimidating or retaliating against that person for the person's participation in a neighborhood crime watch program is guilty of a Class 1 misdemeanor including a fine of at least three hundred dollars (\$300.00). It is a violation of this section for a person to threaten or intimidate an identifiable member or a resident in the same household as the member of a neighborhood crime watch program while that member is traveling to or from a neighborhood crime watch

meeting, actively participating in a neighborhood crime watch program activity, or actively participating in an ongoing criminal investigation."

SECTION 4. Section 3 of this act becomes effective December 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 6:03 p.m. on the 1st day of August, 2006.

H.B. 1847

Session Law 2006-182

AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING COMMUNICATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.80(1) reads as rewritten:

"(1) The term "disclosure date" means either of the following:

- a. The first date during any calendar year when an electioneering communication is aired after an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000).
- b. Any other date during that calendar year by which an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for that calendar year."

SECTION 1.(b) G.S. 163-278.90 reads as rewritten:

"§ 163-278.90. Definitions.

As used in this Article, the following terms have the following definitions:

- (1) The term "disclosure date" means either of the following:
 - a. The first date during any calendar year when an electioneering communication is transmitted after an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars (\$10,000).
 - b. Any other date during that calendar year by which an entity has ~~made disbursements~~incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for that calendar year.
- (2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:
 - a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
 - b. Is made within one of the following time periods:
 1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
- c. Is targeted to the relevant electorate.
- (3) The term "electioneering communication" does not include any of the following:
 - a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
 - b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
 - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
 - d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.
 - e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- (4) The term "mass mailing" means any mailing by United States mail or ~~facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list.~~ facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.
- (5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).
- (5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.
- (6) The term "targeted to the relevant electorate" ~~means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:~~ electorate" means:
 - a. ~~If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.~~
 - b. ~~If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000~~

~~telephone calls in the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.~~

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or
2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or
2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

- a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.
- b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article."

SECTION 2.(a) G.S. 163-278.81 reads as rewritten:

"§ 163-278.81. Disclosure of Electioneering Communications.

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that ~~makes a disbursement~~ incurs an expense for the direct costs of producing ~~and~~ or airing electioneering communications in an aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

- (1) The identification of the entity ~~making the disbursement~~ incurring the expense, of any entity sharing or exercising direction or control over

- the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement incurring the expense.~~
- (2) The principal place of business of the entity ~~making the disbursement incurring the expense~~ if the entity is not an individual.
 - (3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars (\$1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made~~ expense was incurred.
 - (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.
 - (5) The names and addresses of all ~~contributors who contributed~~ entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars (\$1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.
 - (6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 2.(b) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals who ~~makes a disbursement~~ incurs an expense for the direct costs of producing ~~and or~~ transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

- (1) The identification of the entity ~~making the disbursement, incurring the expense,~~ of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity ~~making the disbursement incurring the expense.~~
- (2) The principal place of business of the entity ~~making the disbursement incurring the expense~~ if the entity is not an individual.
- (3) The amount of each ~~disbursement~~ expense incurred of more than one thousand dollars (\$1,000) during the period covered by the statement and the identification of the entity to whom the ~~disbursement was made~~ expense was incurred.
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

- (5) The names and addresses of all ~~contributors who contributed entities~~ that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars (\$1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds ~~contributed~~ provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.
- (6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date."

SECTION 3.(a) G.S. 163-278.82(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing ~~and or~~ airing any electioneering ~~communication~~ communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. ~~For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.~~

SECTION 3.(b) G.S. 163-278.92(a) reads as rewritten:

"(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or ~~airing~~ transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing ~~and airing or transmitting~~ any electioneering ~~communication~~ communication, unless that individual, committee, association, or other organization or

group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For the purpose of this section, the term "electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article."

SECTION 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 17th day of July, 2006.

Became law upon approval of the Governor at 6:03 p.m. on the 1st day of August, 2006.

H.B. 2060

Session Law 2006-183

AN ACT TO MAKE CHANGES TO THE LAWS CONCERNING VICTIMS' COMPENSATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE, AND TO MAKE OTHER CHANGES TO THE LAWS CONCERNING VICTIMS' COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2(1) reads as rewritten:

"(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of ~~three thousand five hundred dollars (\$3,500)~~ five thousand dollars (\$5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of

the amount usually charged by the provider for the treatment or care. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense."

SECTION 2. G.S. 15B-2(3) reads as rewritten:

"(3) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to ~~him~~ the victim or the claimant from any of the following sources:

- a. ~~The offender;~~offender.
- b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more ~~states;~~states.
- c. ~~Social security, medicare, and medicaid;~~Security, Medicare, or Medicaid.
- d. State-required, temporary, nonoccupational disability ~~insurance;~~insurance.
- e. Worker's ~~compensation;~~compensation.
- f. Wage continuation programs of any ~~employer;~~employer.
- g. Proceeds of a contract of insurance payable to the victim for loss that ~~he~~ the victim sustained because of the criminally injurious ~~conduct;~~conduct.
- h. A contract providing prepaid hospital and other health care services, or benefits for disability.
- i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body."

SECTION 3. G.S. 15B-4(a) reads as rewritten:

"(a) Subject to the limitations in G.S. 15B-22, compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. Compensation shall only be paid for economic loss and not for noneconomic ~~loss;~~detriment. The Commission shall follow the rules of liability applicable to civil tort law in North Carolina."

SECTION 4. G.S. 15B-11(c) reads as rewritten:

"(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim, without good cause, has not fully cooperated with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to the criminally injurious conduct that is the basis for the award."

SECTION 5. G.S. 15B-11(d) reads as rewritten:

"(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source,

the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). ~~The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation."~~

SECTION 6. This act becomes effective July 1, 2006, and applies to claims filed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 6:06 p.m. on the 1st day of August, 2006.

H.B. 1323

Session Law 2006-184

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new article to read:

"Article 92.

"North Carolina Innocence Inquiry Commission.

"§ 15A-1460. Definitions.

The following definitions apply in this Article:

- (1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.
- (2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.

- (3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
- (4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"§ 15A-1461. Purpose of Article.

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"§ 15A-1462. Commission established.

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"§ 15A-1463. Membership; chair; meetings; quorum.

(a) The Commission shall consist of eight voting members as follows:

- (1) One shall be a superior court judge.
- (2) One shall be a prosecuting attorney.
- (3) One shall be a victim advocate.
- (4) One shall be engaged in the practice of criminal defense law.
- (5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
- (6) One shall be a sheriff holding office at the time of his or her appointment.
- (7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3) of this subsection. After an appointee has served his or her first three-year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) of this subsection which shall be appointed by the Chief Justice.

(a1) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2007, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the

call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote.

"§ 15A-1464. Terms of members; compensation; expenses.

(a) Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and three appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this act, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"§ 15A-1465. Director and other staff.

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"§ 15A-1466. Duties.

The Commission shall have the following duties and powers:

- (1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.
- (2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.
- (3) To coordinate the investigation of cases accepted for review.
- (4) To maintain records for all case investigations.
- (5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

- (6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

Except in cases where the convicted person entered and was convicted on a plea of guilty, if five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases. In cases where the convicted person entered and was convicted on a plea of guilty, if all of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction.

If less than five of the eight voting members of the Commission, or in cases where the convicted person entered and was convicted on a guilty plea less than all of the eight voting members of the Commission, conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review,

including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the convicted person. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

"§ 15A-1470. No right to further review of decision by Commission or three-judge panel; convicted person retains right to other postconviction relief.

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"§ 15A-1401. Post-trial motions and appeal.

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

- (1) Motion for appropriate relief, as provided in Article 89.
- (1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.
- (2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.
- (3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

- (1) New trial on all or any of the charges.
- (2) Dismissal of all or any of the charges.
- (3) The relief sought by the State pursuant to G.S. 15A-1416.
- (3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.
- (4) Any other appropriate relief."

SECTION 4. G.S. 15A-1411 reads as rewritten:

"§ 15A-1411. Motion for appropriate relief.

(a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

(d) A claim of factual innocence asserted through the North Carolina Innocence Inquiry Commission does not constitute a motion for appropriate relief and does not impact rights or relief provided for in this Article."

SECTION 5. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings.~~ proceedings, or, for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 6. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 7. G.S. 132-1.4 reads as rewritten:

"§ 132-1.4. Criminal investigations; intelligence information ~~records; records;~~ Innocence Inquiry Commission records.

(a) ~~Records of criminal investigations conducted by public law enforcement agencies or agencies,~~ records of criminal intelligence information compiled by public law enforcement ~~agencies~~, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

...."

SECTION 8. In order to allow staggered terms of members of the North Carolina Innocence Inquiry Commission, as required by G.S. 15A-1464(a) as enacted by this act, the Commission members identified in G.S. 15A-1463(a)(1), (2), and (4) shall be appointed to initial terms of two years, the Commission members identified in G.S. 15A-1463(a)(3), (5), and (6) shall be appointed to initial terms of three years, and the Commission members identified in G.S. 15A-1463(a)(7) shall be appointed to initial terms of one year.

SECTION 9. Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under this act. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the North Carolina Conference of District Attorneys and the Attorney General.

SECTION 10. The State Judicial Council shall report to the General Assembly and the Chief Justice no later than December 31, 2009, and no later than December 31 of every third year, regarding the implementation of this act and shall include in its report the statistics regarding inquiries and any recommendations for changes. The House of Representatives and the Senate shall refer the report of the State Judicial Council to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and such other committees as the Speaker of the House of Representatives or the President Pro Tempore of the Senate shall deem appropriate, for their review.

SECTION 11. The initial members of the North Carolina Innocence Inquiry Commission shall be appointed not later than October 1, 2006. No claims of actual innocence may be filed with the Commission until November 1, 2006. No claims of actual innocence where the convicted person entered and was convicted on a plea of guilty may be filed with the Commission until November 1, 2008.

SECTION 12. This act is effective when it becomes law and applies to claims of factual innocence filed on or before December 31, 2010.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:20 a.m. on the 3rd day of August, 2006.

S.B. 948

Session Law 2006-185

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE BOATING SAFETY AND VESSEL TITLING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes reads as rewritten:

"Article 1.

"Boating Safety Act.

"§ 75A-1. Declaration of policy.

It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto.

"§ 75A-2. Definitions.

As used in this Chapter, unless the context clearly requires a different meaning:

- (1) "Abandoned vessel" means a vessel that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel. The term does not include a vessel that is left by an owner or agent of the owner with any person or business for the purpose of storage, maintenance, or repair and that is not subsequently reclaimed.
- (1a) "Certificate of number" means the document and permanent identification number issued by the Wildlife Resources Commission for the purpose of registering a vessel in this State.
- (1b) "Commission" means the Wildlife Resources Commission.
- (1c) "Director" means the Executive Director of the Wildlife Resources Commission.
- (1d) "Electric generating facility" means any plant facilities and equipment used for the purposes of producing, generating, transmitting, delivering, or furnishing electricity for the production of power.
- ~~(4)(1e)~~ "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not such the machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.
- (1f) "No-wake speed" means idle speed or slow speed creating no appreciable wake.
- (2) "Operate" means to navigate or otherwise use or occupy a—any motorboat or vessel, and shall be applicable to any motorboat or vessel that is afloat.
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an

obligation, but the term excludes a lessee under a lease not intended as security.

- (4) "Person" means an individual, partnership, firm, corporation, association, or other entity.
- (4a) "Underway" means a vessel that is not at anchor, or made fast to the shore, or aground.
- (5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.
- (6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129.
- (7) ~~"Electric generating facility" means any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power.~~

"§ 75A-3. Wildlife Resources Commission to administer Chapter; Motorboat Vessel Committee; funds for administration.

(a) ~~It shall be the duty and responsibility of the North Carolina Wildlife Resources~~ The Commission to ~~shall~~ enforce and administer the provisions of this Chapter.

(b) ~~The chairman-chair~~ of the Wildlife Resources Commission shall designate from among the members of the ~~Wildlife Resources~~ Commission three members who shall serve as the Motorboat Vessel Committee of the ~~Wildlife Resources~~ Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. ~~Gasoline-Motor fuel~~ excise tax revenue is credited to the Account under G.S. 105-449.126. ~~Revenue in the Account shall be used by the Wildlife Resources~~ The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. ~~At The Commission shall use at least three dollars (\$3.00) of each one-year vessel registration certificate of number fee and at least nine dollars (\$9.00) of each three-year vessel registration certificate of number fee collected under the numbering provisions of G.S. 75A-5 shall be used for boating access area acquisition, development, and maintenance.~~

"§ 75A-4. Identification numbers required.

Every vessel on the waters of this State shall be numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on ~~such the waters unless the~~ of this State unless all of the following conditions are met:

- (1) The vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another ~~state, and unless~~ state.

~~(2)(4)~~ The certificate of number awarded to ~~such~~ the vessel is in full force and effect, ~~and effect~~.

~~(3)(2)~~ The ~~identifying~~ identification number set forth in the certificate of number is displayed on each side of the bow of ~~such~~ the vessel.

"§ 75A-5. **Application for numbers; fee; displaying; certificate of number and fees; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States federal regulations; award of certificates; records; award of certificates; renewal of certificates; transfer of interest, abandonment, etc.; partial interest; destroyed or junked vessels; abandonment; change of address; unauthorized numbers; duplicate certificates; display.**

(a) Application for Certificate of Number and Fees. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the ~~Wildlife Resources Commission on forms approved by it~~ Commission. The Commission shall furnish application forms and shall prescribe the information contained in the application form. The application shall be signed by the owner of the ~~vessel, or his agent,~~ vessel or the owner's agent and shall be accompanied by a fee of ten dollars (\$10.00) for a one-year period or by a fee of twenty-five dollars (\$25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The ~~applicant-owner~~ shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall ~~have the same entered upon the records of its office~~ enter the application in its records and issue ~~to the applicant owner~~ a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available ~~at all times~~ for inspection on the vessel for which issued, whenever such the certificate is issued at all times the vessel is in operation. ~~Provided, however, any~~ Any person charged with failing to so carry ~~such a~~ a certificate of number shall not be convicted if ~~he~~ the person produces in court a certificate of number ~~theretofore previously~~ previously issued to ~~him~~ the owner that was ~~and~~ valid at the time of ~~his arrest,~~ the alleged violation.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect ~~which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state~~ shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). ~~Such~~ The recordation shall be ~~in the manner and pursuant to the procedure required for the award of a number under made pursuant to~~ subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee of ten dollars (\$10.00) for a one-year period or by a fee of twenty-five dollars (\$25.00) for a three-year period shall be filed with the ~~Wildlife Resources~~ Commission and a new certificate bearing the same identification number

shall be awarded to the new owner in the same manner as ~~provided for in an original award certificate~~ of number. ~~In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars (\$2.00).~~ Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears ~~therein on the certificate~~ is the owner of the boat vessel referred to ~~therein, on the certificate.~~

(d) Conformity With Federal Regulations. – In the event that an agency of the ~~United States federal~~ government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the ~~Wildlife Resources~~ Commission shall be in conformity therewith.

(e) ~~The Wildlife Resources Commission may issue any vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (1) of this section to act as agent for the issuance of vessel transactions subject to the requirements set forth in this Chapter. Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter shall be valid as if issued directly by the Commission. As compensation for services rendered to the Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:~~

- ~~(1) Renewal of vessel registration — \$1.25.~~
- ~~(2) Transfer of ownership and registration of a vessel — \$3.00.~~
- ~~(3) Issuance of new certificate of vessel number and registration — \$3.00.~~
- ~~(4) Issuance of duplicate vessel registration — \$0.50.~~
- ~~(5) Issuance, transfer, duplication, or lien recordation of vessel title — \$3.00.~~

~~It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.~~

(f) Records. – All records of the ~~Wildlife Resources~~ Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. – Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the ~~same month~~ during which the same certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. ~~In addition to the year of expiration, the validation decal required by subsection (a) of this section shall indicate the last month during which the certificate is valid.~~ No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of ~~such the~~ vessel.

(h) Renewal of Certificates. – ~~Each~~ An owner of a vessel awarded a certificate of number awarded pursuant to this Chapter must be renewed shall renew the certificate on or before the first day of the month ~~next succeeding that during~~ after which the same certificate expires; otherwise, ~~such the~~ certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the ~~Wildlife Resources~~ Commission and shall be accompanied by a fee of ten dollars (\$10.00) for a one-year period or by a fee of twenty-five dollars (\$25.00) for

a three-year period; provided, there shall be no fee required for a period of one year for renewal of certificates of number ~~which~~ that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. – The owner shall furnish the ~~Wildlife Resources~~ Commission notice of the transfer of ~~all or~~ any part of ~~his~~ the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section ~~or of the destruction or abandonment of such vessel,~~ within 15 days thereof. ~~Such transfer, destruction, or abandonment shall terminate the certificate of number for such vessel except that, in the case of a transfer of a part interest which does of the transfer.~~ A transfer of partial interest in a vessel shall not affect the owner's right to operate ~~such~~ the vessel, ~~nor shall a such transfer of partial interest in a vessel shall not terminate the certificate of number.~~

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) ~~Any holder of a certificate of number shall notify the Wildlife Resources Commission within 15 days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address. The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.~~Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars (\$5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number ~~awarded to a vessel~~ set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of ~~such a~~ vessel, except the validation decal required by subsection (a) of this section.

(l) ~~When certificates of number are to be issued by agents as provided by subsection (c) of this section, the Wildlife Resources Commission may establish administrative guidelines that prescribe:~~

- (1) ~~The qualifications of agents;~~
- (2) ~~The duties of agents;~~

- (3) ~~Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;~~
- (4) ~~Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;~~
- (5) ~~Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and~~
- (6) ~~Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.~~

~~In accordance with administrative guidelines developed pursuant to this section, the executive director may:~~

- (1) ~~Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;~~
- (2) ~~Require prompt and accurate reporting and remittance of public funds or documents by agents;~~
- (3) ~~Conduct periodic and special audits of accounts;~~
- (4) ~~Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and~~
- (5) ~~Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds and property in the event of the termination of an agency.~~

~~A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars (\$5.00) or more than two hundred dollars (\$200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.~~

"§ 75A-5.1. Commercial fishing vessels; renewal of identification number.

(a) The owner of any commercial fishing vessel that is registered under the provisions of G.S. 113-168.6 may renew the certificate of number of the vessel free of charge for a one-year period when the owner has complied with all of the conditions of this section.

(b) As used in this section, "commercial fishing vessel" is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the vessel shall ~~submit, and the Wildlife Resources Commission shall require:~~submit both of the following to the Commission:

- (1) The regular application for renewal of the certificate of number of the vessel, as provided by G.S. ~~75A-5; and~~75A-5.

- (2) ~~A statement, on a form to be supplied by the Commission, and signed by the applicant, that the vessel for which the application for renewal is made is a commercial fishing vessel; and~~Satisfactory proof that the vessel owner possesses a valid commercial fishing vessel registration.
- (3) ~~A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing vessel registration fee imposed by G.S. 113-168.6 has been paid for the vessel for the period during which the application for renewal of the certificate of number is submitted.~~

(d) Any person who ~~shall willfully give~~gives false information upon ~~the an~~ application or ~~the statement required by this section or who shall falsify~~falsifies any ~~registration certificate of number fee receipt required by this section shall be~~is guilty of a Class 1 misdemeanor.

"§ 75A-5.2. Vessel agents.

(a) In order to facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Commission, and to facilitate vessel transactions, the Commission may conduct vessel transactions through any of the following:

- (1) Vessel agents.
- (2) The Commission's headquarters.
- (3) Employees of the Commission.
- (4) Two or more of those sources simultaneously.

(b) When there are substantial reasons for differing treatment, the Commission may conduct vessel transactions by one method in one locality and by another method in another locality.

(c) As compensation for services rendered to the Commission and to the general public, vessel agents shall receive the following specified commission from the statutory fee for each listed transaction:

- (1) Renewal of certificate of number – \$1.25.
- (2) Transfer of ownership and certificate of number – \$3.00.
- (3) Issuance of new certificate of number – \$3.00.
- (4) Issuance of duplicate certificate of number – \$0.50.
- (5) Issuance or transfer of certificate of title – \$3.00.

(d) When certificates of number are to be issued by vessel agents as provided by subsection (a) of this section, the Commission may adopt rules to provide for any of the following:

- (1) Qualifications of the vessel agents.
- (2) Duties of the vessel agents.
- (3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number.
- (4) Types and amounts of evidence that a vessel agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
- (5) Any other reasonable requirement or condition that the Commission deems necessary to expedite and control the issuance of certificates of number by vessel agents.

(e) The Commission may adopt rules to authorize the Director to take any of the following actions related to vessel agents:

- (1) Select and appoint vessel agents in the areas most convenient to the boating public.
- (2) Limit the number of vessel agents in any one area if necessary for efficiency of operation.
- (3) Require prompt and accurate reporting and remittance of public funds or documents by vessel agents.
- (4) Conduct periodic and special audits of accounts.
- (5) Suspend or terminate the authorization of any vessel agent found to be noncompliant with rules adopted by the Commission or when State funds or property are reasonably believed to be in jeopardy.
- (6) Require the immediate surrender of all equipment, forms, supplies, records, and State funds and property issued by or belonging to the Commission, in the event of the termination of a license agent.

(f) The Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to conduct vessel transactions as a vessel agent of the Commission.

(g) If any check or bank account draft of any vessel agent for the issuance of certificates of number shall be returned by the banking facility upon which the same is drawn for lack of funds, the vessel agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars (\$5.00) or more than two hundred dollars (\$200.00). Vessel agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(h) It is a Class 1 misdemeanor for a vessel agent to do any of the following:

- (1) Withhold or misappropriate funds generated from vessel transactions.
- (2) Falsify records of vessel transactions.
- (3) Willfully and knowingly assist or allow a person to obtain a certificate of number or certificate of title for which the person is ineligible.
- (4) Willfully issue a backdated certificate of number or certificate of title.
- (5) Willfully include false information or omit material information on vessel transaction forms and records regarding either:
 - a. A person's entitlement to a particular certificate of number or certificate of title.
 - b. The applicability or term of a particular certificate of number.
- (6) Charge or accept any fee, remuneration, or other item of value that exceeds the fee amounts provided by statute.
- (7) Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

"§ 75A-6. Classification; rules.

(a) ~~Motorboats~~ Vessels subject to the provisions of this Chapter shall be divided into ~~four classes~~ five categories as follows:

- (1) Class A. Less than 16 feet in length.
- (2) Class 1. Sixteen feet or over and less than 26 feet in length.
- (3) Class 2. Twenty-six feet or over and less than 40 feet in length.

(4) ~~Class 3. Forty feet or over, over and not more than 65 feet in length.~~

(5) Class 4. More than 65 feet in length.

(b) through (e) Repealed by Session Laws 1993, c. 361, s. 2.

(f) ~~Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, so placed as to be readily accessible: Provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.~~

(g) ~~Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Wildlife Resources Commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.~~

(h) ~~The provisions of subsection (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to G.S. 75A-14 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.~~

(i) ~~Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Wildlife Resources Commission.~~

(j) ~~Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Wildlife Resources Commission properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.~~

(k) Repealed by Session Laws 1993, c. 361, s. 2.

(l) ~~No person shall operate or give permission for the operation of a vessel which that is not equipped as required by this section or modification thereof.~~section.

(m) ~~In the event that any of the regulations of subsections (a), (f), (g), (h), (i), (j), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife Resources~~ The Commission is hereby granted the authority to may adopt such regulations as are necessaryrules ~~to conform with to the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.~~

(n) ~~All boats vessels propelled by machinery of 10 hp or less, which less that are operated on the public waters of this State, State shall carry at least one life preserver, or personal flotation device, life belt, or ring buoy, or other device of the sort prescribed by the regulations~~rules ~~of the Wildlife Resources Commission for each person on board, and from one-half hour after sunset to one-half hour before sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision.~~

(o) ~~The Commission for Health Services shall adopt rules establishing standards for the approval of sewage treatment devices and holding tanks for marine toilets installed in boats vessels operating on the inland fishing waters of the State as designated by the Wildlife Resources Commission and the inland lake waters of the State. No~~ The Commission shall not issue a certificate of number for any vessel

operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of this State that is equipped with a marine toilet ~~shall be registered by the Wildlife Resources Commission unless such the~~ vessel is provided with a sewage treatment device or holding tank approved by the Commission for Health Services. All vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State that are equipped with a marine toilet ~~shall be required to provide~~ a sewage treatment device or holding tank approved by the Commission for Health Services. ~~The Wildlife protectors of the Wildlife Resources Commission shall may~~ inspect vessels on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters to determine if approved treatment devices or holding tanks are properly installed and if they are operating in a satisfactory manner. A vessel registered, ~~documented~~ documented, or otherwise licensed in another state and equipped with a marine toilet not prohibited in such state may be operated on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission, without regard to the provisions of this subsection while making an interstate trip.

"§ 75A-6.1. Navigation rules.

(a) Every vessel operated on the waters of this State that is required to obtain an identification number pursuant to this ~~Chapter or Chapter~~, has a valid marine document issued by the federal Bureau of Customs or any federal agency successor to it, or issued pursuant to a federally approved numbering system of another state shall comply with the navigation rules, including requirements for navigational lights, sound-signaling devices, and other equipment, contained in the Inland Navigational Rules Act of 1980, codified as amended at 33 U.S.C. §§ 2001-2038, 2071-2073 (1993) and rules adopted pursuant thereto, see 33 C.F.R. Part 84 (1992).

(b) The ~~Wildlife Resources~~ Commission is responsible for the enforcement of the rules specified in subsection (a) of this section. The rules specified in subsection (a) of this section are also enforceable by all peace officers with general subject matter jurisdiction.

(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute a Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars (\$100.00).

"§ 75A-7. Exemption from numbering requirements.

(a) A vessel shall not be required to be numbered under this Chapter if it is:

- (1) A vessel ~~which that~~ is required to be awarded a-an identification number pursuant to federal law or a federally approved numbering system of another state, and for which a-an identification number has been so awarded: Provided, that any such boat vessel shall not have been within this State for a period in excess of 90 consecutive days.
- (2) A vessel from a country other than the United States temporarily using the waters of this State.
- (3) A vessel whose owner is the United States, a state or a subdivision thereof.
- (4) A ship's lifeboat.
- (5) A vessel ~~which that~~ has a valid marine document issued by the federal Bureau of Customs of the United States government or any federal agency successor thereto.
- (6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The ~~Wildlife Resources~~ Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such ~~boat~~ vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a ~~boat~~ vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent certificate ~~may be issued~~ certificate of number, displaying the same identification number, without charge to the successor entity. When any such ~~boat~~ vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to ~~such the~~ transfer. Prior to further use on the waters of this State, the new owner shall obtain ~~either a temporary certificate of number or a regular~~ a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to ~~motorboats~~ a vessel owned by a nonprofit rescue ~~squads~~ squad apply only to ~~those a~~ a vessel operated exclusively for rescue purposes, including rescue training.

"§ 75A-8. Boat Vessel liveries.

~~It shall be unlawful for the~~An owner of a ~~boat~~vessel livery ~~to shall not~~ rent a vessel to any person unless the provisions of this Chapter have been complied with. ~~It shall be the duty of owners~~An owner of ~~boat liveries to a vessel livery~~ shall equip all vessels rented as required by this Chapter.

"§ 75A-9. Muffling devices.

(a) ~~The exhaust of every~~Every internal combustion engine used on ~~any motorboat a vessel~~ shall ~~be effectively muffled by~~ have effective muffling equipment ~~so constructed installed and used on the exhaust to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race.~~ prohibited.

(b) Every internal combustion engine with an open-air exhaust that is used on a vessel that has a capacity of operating at more than 4,000 revolutions per minute shall have effective muffling equipment installed and used on each exhaust manifold stack. This subsection shall not apply to a licensed commercial fishing vessel.

(c) This section shall not apply to vessels competing in a regatta or race approved by the United States Coast Guard, for such vessels while on trial runs during a period not to exceed 48 hours immediately preceding the regatta or race, and for such vessels while competing in official trials for speed records during a period not to exceed 48 hours immediately following the regatta or race.

~~"§ 75A-9.1. Muffling devices—Motorboats.~~

~~Every internal combustion engine with an open-air exhaust which is used on any motorboat and which has a capacity of operating at more than 4000 revolutions per minute shall have effective muffling equipment installed on each exhaust manifold~~

~~stack except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. This Article shall not apply to licensed commercial fishing boats.~~

"§ 75A-10. Operating boat vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any ~~motorboat or motor~~ vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

~~(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this subsection or subsection (b) above. subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to this subsection and subsection (b) above. subsections (b), (b1), and (b2) of this section.~~

(b3) A person who violates a provision of subsection (a), (b), or (b1) of this section is guilty of a Class 2 misdemeanor.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class 1 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars (\$50,000) per day of violation.

"§ 75A-10.1. Family purpose doctrine applicable.

The family purpose doctrine, as applicable in this State to tort cases arising from the operation of motor vehicles, shall apply to tort cases arising from the operation of motorboats and vessels as those terms are defined in this Chapter.

"§ 75A-10.2. Proof of ownership of ~~motorboat~~, vessel.

(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving ~~motorboats or vessels as said terms are described in G.S. 75A-2,~~ a vessel, proof of ownership of such ~~motorboat or~~ vessel at the time of ~~such~~ the accident or collision shall be prima facie evidence that said ~~motorboat or~~ the vessel was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which ~~said~~ the injury or cause of action arose.

(b) Proof of the certificate of number stating the identification number awarded to the ~~motorboat or~~ vessel in the name of any person, ~~firm~~ firm, or corporation as required by this Chapter, or proof of the licensing, registration, or documentation of ~~said motorboat or~~ the vessel as required by other state or federal law in the name of any person, ~~firm~~ firm, or corporation, shall for the purpose of any such action, be prima facie evidence of ownership and that ~~said motorboat or~~ the vessel was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of ~~his~~ the operator's employment.

"§ 75A-11. Duty of operator involved in collision, ~~accident or other casualty~~, accident, casualty, or other occurrence.

(a) ~~It shall be the duty of the~~ For the purposes of this section, the term 'occurrence' means a collision, accident, casualty, or other similar occurrence involving a vessel. The operator of a vessel involved in a collision, accident, or other casualty, an occurrence, so far as he can ~~the operator is able to do so without serious danger to his own~~ the operator's vessel, crew, and passengers (if any), to ~~shall~~ render persons affected by the collision, accident, or other casualty such occurrence any assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, occurrence, and also to give his the operator's name, address ~~address, and identification of his the operator's vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty, occurrence.~~

(b) ~~In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty~~ If an occurrence results in death the death, injury, or disappearance indicating death or injury, or injury to of a person or damage to property in excess of five hundred dollars (\$500.00), shall, within 10 days, a vessel or other property of two thousand dollars (\$2,000) or more, or if there is complete loss of any vessel, the operator of the vessel shall file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, occurrence, including such any information as said the agency may, by regulation, rule, require. If an occurrence results in death, disappearance, or injury, the operator of the vessel shall file the report with the Commission within 48 hours of the occurrence. If the occurrence results in vessel or property damage, or complete loss of any vessel, the operator of the vessel shall file the report with the Commission within 10 days of the occurrence. When the operator of the vessel cannot submit the report, the owner of the vessel shall submit the report. Such report ~~Reports filed pursuant to this subsection shall not be admissible as evidence.~~

(c) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator of the vessel shall, without delay and by the most expeditious means available, notify the nearest law enforcement agency of all of the following:

- (1) The date, time, and exact location of the occurrence.
- (2) The name of each person who died or disappeared.
- (3) The certificate of number and name of the vessel.
- (4) The name and address of the vessel owner or owners and the vessel operator.

(d) If the operator of the vessel cannot give notice required by this section, each person on board the vessel shall notify the law enforcement agency or determine that notice has been given. Upon receiving notice under this section, a law enforcement agency shall immediately provide the Commission and the United States Coast Guard with the information required by this section.

"§ 75A-12. Furnishing information to agency of United States.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the ~~Wildlife Resources~~ Commission pursuant to G.S. 75A-11(b) shall be transmitted to ~~said~~ the requesting official or agency of the United States.

"§ 75A-13. Water skis, surfboards, etc.

(a) No person shall operate a vessel on any water of this State for towing a person or persons on water skis, ~~or a surfboard, or similar device unless there~~ unless at least one of the following conditions is met:

- (1) There is in ~~such a~~ the vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being towed or unless the skier towed.
- (2) The persons being towed wear a life preserver or unless the boat personal flotation device.
- (3) The vessel is equipped with a rear view mirror.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional ~~exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14.~~ exhibition.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person.

"§ 75A-13.1. Skin and scuba divers.

(a) No person shall engage in skin diving or scuba diving in the waters of this State ~~which that~~ are open to boating, or assist in such diving, without displaying a diver's flag from a mast, buoy, or other structure at the place of diving; and no person shall display such flag except when diving operations are under way or in preparation.

(b) The diver's flag shall be square, not less than 12 inches on a side, and shall be of red background with a diagonal white stripe, of a width equal to one fifth of the flag's height, running from the upper corner adjacent to the mast downward to the opposite outside corner.

(c) No operator of a vessel under way in the waters of this State shall permit ~~such the~~ the vessel to approach closer than 50 feet to any structure from which a diver's flag is then being displayed, except where ~~such the~~ the flag is so positioned as to constitute an unreasonable obstruction to navigation; and no person shall engage in skin diving or

scuba diving or display a diver's flag in any locality ~~at which the same that~~ will unreasonably obstruct vessels from making legitimate navigational use of the water.

(d) A person who violates a provision of this section is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed twenty-five dollars (\$25.00).

"§ 75A-13.2: Repealed by Session Laws 1999-447, s. 3.

"§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between sunset and sunrise. For purposes of this section, "personal watercraft" means a small vessel ~~which that~~ uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(a1) No person shall operate a personal watercraft on the waters of this State at greater than no-wake speed within 100 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel, unless the personal watercraft is operating in a narrow channel. No person shall operate a personal watercraft in a narrow channel at greater than no-wake speed within 50 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

- (1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or
- (2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a ~~boater-boating~~ safety certification card issued by the ~~Wildlife Resources~~ Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the ~~Wildlife Resources~~ Commission or local law enforcement agency.

(b1) A person under 16 years of age who operates a personal watercraft in violation of the provisions of subsection (b) of this section is guilty of an infraction as provided in G.S. 14-3.1.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) ~~It shall be unlawful for any~~ No person, firm, or corporation ~~to shall~~ engage in the business of renting personal watercraft to the public for operation by the rentee unless ~~such the~~ person, firm, or corporation has secured insurance for ~~his own the~~ liability of the person, firm, or corporation and that of ~~his the~~ rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each ~~such~~ personal watercraft rented must be covered by a

policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars (\$300,000) per occurrence.

(c2) A vessel livery that fails to carry liability insurance in violation of subsection (c1) of this section is guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars (\$1,000).

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

- (1) Each person riding on or being towed behind ~~such—the~~ vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not satisfy this requirement; and
- (2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water ~~skis-skis, a surfboard, or other device~~similar device unless:

- (1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and
- (2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and ~~include~~include any of the following:

- (1) Unreasonably or unnecessarily weaving through congested vessel ~~traffic;traffic.~~
- (2) Jumping the wake of another vessel within 100 feet of ~~such—the~~ other vessel or when visibility around ~~such—the~~ other vessel is ~~obstructed;obstructed.~~
- (3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision;collision.~~
- (4) Repealed by Session Laws 2000-52, s. 2.
- (5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a

narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(f1) For purposes of this section, "narrow channel" means a segment of the waters of the State 300 feet or less in width.

(g) Repealed by Session Laws 1999-447, s. 1.

(h) Nothing in this section prohibits units of local government, marine commissions, or local lake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local lake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

"§ 75A-14: Repealed by Session Laws 1999-248, s. 4.

"§ 75A-14.1. Lake Norman No-Wake Zone.

It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a ~~boat~~ vessel launching area, bridge, dock, pier, marina, ~~boat~~ vessel storage structure, or ~~boat~~ vessel service area on the waters of Lake Norman. ~~No-wake speed is idle speed or slow speed creating no appreciable wake.~~

"§ 75A-15. Rules on water safety; adoption of the ~~Uniform Waterway Marking~~ United States Aids to Navigation System.

(a) In accordance with subsection (b) of this section, the ~~Wildlife Resources~~ Commission is empowered to ~~make adopt~~ rules, for the local water in question, as to:

- (1) Operation of vessels, including restrictions concerning speed zones, and type of activity conducted.
- (2) Promotion of boating and water safety generally by occupants of vessels, swimmers, fishermen, and others using the water.
- (3) Placement and maintenance of navigation aids and markers, in conformity with governing provisions of law.

Prior to ~~making the adoption of~~ any rules, the Commission shall investigate the water recreation and safety needs of the local water in question. In ~~making such conducting the investigation~~, the Commission in its discretion may hold public hearings on the rules proposed and the general needs of the local water in question. After ~~such completion of the investigation~~ and application of standards, the Commission may in its discretion ~~pass adopt~~ the rules requested, ~~pass adopt~~ them in an amended form, or refuse to ~~pass adopt~~ them. After ~~passage, adoption~~, the Commission may amend or repeal the rules after first holding a public hearing.

(b) Any subdivision of this State may, but only after public notice, make formal application to the ~~Wildlife Resources~~ Commission for rules on waters within the subdivision's territorial limits as to the matters listed in subsection (a) of this section. The ~~Wildlife Resources~~ Commission ~~may, may~~ adopt rules applicable to local areas of water defined by the Commission that are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

(b1) The ~~Wildlife Resources~~ Commission may adopt rules ~~prohibiting to prohibit~~ entry of vessels into public swimming areas and ~~establishing to establish~~ speed zones at public ~~boat vessel~~ launching ramps, marinas, or ~~boat vessel~~ service areas and on other congested water areas where there are demonstrated water safety hazards. Enforcement of ~~such rules~~ rules adopted pursuant to this subsection shall be dependent upon placement and maintenance of regulatory markers in accordance with the ~~Uniform State Waterway Marking~~ United States Aids to Navigation System by ~~such agency~~ the Commission or ~~agencies as may be an agency~~ designated by the ~~Wildlife Resources~~ Commission.

(c) The ~~Uniform State Waterway Marking System as approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard, in October 1964~~ United States Aids to Navigation System, as established by 33 Code of Federal Regulations Part 62 (1 July 2005 edition), is hereby adopted for use on the waters of North Carolina. The ~~Wildlife Resources~~ Commission is authorized to ~~pass~~ adopt rules implementing the marking system and may:

- (1) Modify provisions as necessary to meet the special water recreational and safety needs of this State, provided that ~~such the~~ modifications do not depart in any essential manner from the uniform standards being adopted in other states.
- (2) Modify provisions as necessary to conform with amendments to the marking system that may be proposed for adoption by the states.
- (3) Enact supplementary standards regarding design, construction, placement, and maintenance of markers.
- (4) Enact clarifying rules as to matters not covered with precision in the ~~report of the Advisory Panel of State Officials~~ United States Aids to Navigation System.
- (5) Enact implementing rules as to matters left to State discretion in the ~~report of the Advisory Panel of State Officials~~ United States Aids to Navigation System.
- (6) Enact rules forbidding or restricting the placement of markers either throughout the State or in certain classes or areas of waters without prior permission having been obtained from the Commission or some agency or official designated by the Commission.

(c1) It is unlawful to place or maintain any marker of the sort covered by the marking system in the waters of North Carolina that does not conform to or is in violation of the marking system and the implementing rules of the Commission.

(d) Rules enacted under the authority of subsections ~~(a)(a), (b), and (b)(b1)~~ of this section shall supersede all local rules in conflict or incompatible with such rules. As used in this subsection, "local rules" shall include provisions relating to boating, water safety, or other recreational use of local waters in special local, or private acts, in ordinances or rules of local governing bodies, or in ordinances or rules of local water authorities. Except as may be authorized in subsections ~~(a)(a), (b), and (b)(b1)~~ of this section, no local rules may be made respecting the ~~Uniform Waterway Marking~~ United States Aids to Navigation System and its implementation or respecting supplemental safety equipment on vessels.

(e) The ~~Wildlife Resources~~ Commission may adopt rules prohibiting entry or use by vessels or swimmers of waters of the State immediately surrounding impoundment structures and powerhouses associated with electric generating facilities that are found

to pose a hazard to water safety. This subsection shall not apply to the Person-Caswell Lake Authority, Carolina Power and Light Company Lake (Hyco).

"§ 75A-16: **Repealed by Session Laws 1979, c. 830, s. 9, effective July 1, 1980.**

"§ 75A-16.1. **Boating safety course.**

(a) The Commission shall institute and coordinate a statewide course of instruction in boating safety, and in so doing may cooperate with any political subdivision of the State or with any reputable organization having as one of its objectives the promotion of boating safety.

(b) The Commission shall designate those persons or agencies authorized to conduct the course of instruction, and this designation shall be valid until revoked by the Commission. Within 30 days of completion of a course of instruction, a designated person or agency shall submit to the Commission a list of the names of all persons who successfully completed the course of instruction conducted by the designated person or agency.

(c) The Commission may conduct the course in boating safety using Commission personnel or other persons at times or in areas in which competent agencies are unable or unwilling to meet the demand for instruction.

(d) The Commission shall issue a boating safety certification card to each person who successfully completes the course of instruction.

(e) The Commission shall adopt rules to provide for the course of instruction and the issuance of boating safety certification cards consistent with the purposes of this section.

(f) Any person who presents a fictitious boating safety certification card or who attempts to obtain a boating safety certification card through fraud is guilty of a Class 2 misdemeanor.

"§ 75A-17. **Enforcement of Chapter.**

(a) Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and in the exercise thereof shall have authority to stop any vessel subject to this Chapter; ~~and, Chapter.~~ Wildlife protectors or other law enforcement officers of this State, after having identified himself in his official capacity, themselves as law enforcement officers, shall have authority to board and inspect any vessel subject to this Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the ~~Wildlife Resources~~ Commission is authorized to enter into an agreement with the Department of Environment and Natural Resources whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by ~~such~~ enforcement personnel of the Commission and whereby the ~~Wildlife Resources~~ Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when ~~such~~ the ratio has been agreed upon by both of the contracting agencies. ~~Such~~ The agreement may be modified from time to time as conditions may warrant.

(c) Law enforcement vessels may use a flashing blue light on the waters of this State whenever they are engaged in law enforcement or public safety activities. The use of a blue light by any other vessel is prohibited. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.

(d) A siren may not be used on any vessel other than an official law enforcement vessel or other official emergency response vessel.

(e) Vessels operated on the waters of this State shall stop when directed to do so by a law enforcement officer. When stopped, vessels shall remain at idle speed, or shall maneuver in such a way as to permit the officer to come alongside the vessel. Law enforcement officers may direct vessels to stop by using a flashing blue light, a siren, or an oral command by officers in uniform. A person who violates this subsection is guilty of a Class 2 misdemeanor.

(f) Vessels operated on the waters of this State shall slow to a no-wake speed when passing within 100 feet of a law enforcement vessel that is displaying a flashing blue light unless the vessel is in a narrow channel. Vessels operated on the waters of this State in a narrow channel shall slow to a no-wake speed when passing within 50 feet of a law enforcement vessel that is displaying a flashing blue light. A person who violates this subsection is guilty of a Class 3 misdemeanor.

"§ 75A-18. Penalties.

(a) Except as otherwise provided, ~~any a~~ person who violates ~~any a~~ provision of this Article or who violates ~~any a rule or regulation~~ adopted under authority of this Chapter shall be guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars (\$250.00) for each ~~such~~ violation. ~~The~~ This limitation ~~prescribed by the preceding sentence shall not apply in any a case where a more severe penalty may be prescribed in any of said sections.~~ this Chapter.

(b) ~~Any person who violates any provision of G.S. 75A-10(a), (b), or (b1) shall be guilty of a Class 2 misdemeanor.~~

(c) ~~Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only be fined no more than twenty five dollars (\$25.00).~~

(c1) ~~Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars (\$1,000).~~

(d) A person who:

- (1) ~~Willfully violates G.S. 75A-10(d) is guilty of a Class 1 misdemeanor.~~
- (2) ~~Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars (\$50,000) per day of violation.~~

(e) ~~A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1.~~

"§ 75A-19. Operation of watercraft vessels by manufacturers, dealers, etc.

Notwithstanding any other provisions of this Chapter, the ~~Wildlife Resources~~ Commission may ~~promulgate such adopt~~ rules and regulations regarding the operation of ~~watercraft vessels~~ by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper."

SECTION 2. Article 4 of Chapter 75A of the General Statutes reads as rewritten:

"Article 4.

~~"Watercraft~~Vessel Titling Act.**"§ 75A-32. Short title.**

This Article shall be known as the ~~Watercraft~~ Vessel Titling Act.

"§ 75A-33. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

- (1) ~~"Commission" means the North Carolina Wildlife Resources Commission.~~
- (2) ~~"Watercraft" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

The definitions set forth in G.S. 75A-2 shall apply to this Article, unless the context clearly requires a different meaning.

"§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.

(a) ~~Any owner of any watercraft in this State, which is not titled elsewhere, may a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of title.~~ Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by affidavits, bills of sale, or other similar documents. affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State, certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services.

"§ 75A-35. Form and contents of application.

(a) ~~Every application~~ The owner or the owner's attorney shall apply for a certificate of title for a vessel. shall be made by the owner or his duly authorized attorney in fact, and The application shall contain the name, residence, and mailing address of the owner, the county where the vessel is taxed, a statement of the applicant's title and proof of ownership, and a statement of all liens or encumbrances upon the ~~watercraft vessel~~ in the order of their priority, and the priority. The application shall also contain the names and addresses of all persons having any interest in the ~~watercraft and the nature of the interest.~~ vessel.

(b) Every application for a certificate of title for a vessel shall contain a brief description of the ~~watercraft-vessel~~ to be registered, titled, including the name of the manufacturer, ~~State identification certificate of~~ number, hull identification number, length, type, and principal material of construction, model year, ~~date of purchase,~~ identification of the motor (including manufacturer's name and serial number, except on motors of 25 horsepower or less), and the name and address of the person from whom the watercraft was purchased, and purchase information. It shall also include the name and address of the previous owner or owners from whom the vessel was obtained. If the vessel has an outboard motor of greater than 25 horsepower, the application shall also contain identification of the motor, including the serial number and manufacturer. The application shall be made on forms prescribed and furnished by the Commission and shall contain other information as may be required by the Commission.

"§ 75A-36. Notice by owner of change of address.

Whenever any person, after applying for or obtaining the certificate of title of a ~~watercraft, vessel~~, moves from the address shown ~~in-on~~ the application or ~~upon the~~ certificate of title, that person shall, within 30 ~~days,~~days of moving, notify the Commission ~~in writing of his-the~~ change of ~~address-address~~ on a form acceptable to the Commission.

~~A fee of ten dollars (\$10.00) shall be imposed upon anyone failing to comply with this section within the time prescribed.~~

"§ 75A-37. Certificate of title as evidence; duration; transfer of title.

(a) A certificate of title is prima facie evidence of the ownership of a ~~watercraft-vessel~~. A certificate of title shall ~~be remain~~ in force for the life of the ~~watercraft so long as the certificate is owned or held by the legal holder.~~ vessel.

(b) Upon the sale, assignment, or transfer of a ~~watercraft which has been issued a certificate of title under this Article by the legal holder of the certificate, the certificate of title may, at the option of the purchaser or transferee, be delivered to the purchaser or transferee with an assignment on the certificate showing title in the purchaser or transferee. Otherwise, the certificate shall be returned to the Commission for cancellation.~~ vessel for which a certificate of title has been issued under this Article, the legal holder of the certificate of title shall deliver it to the purchaser or transferee. The assignment on the certificate must be completed showing transfer of ownership to the purchaser or transferee and settlement of all outstanding liens and encumbrances. The new owner shall submit the assigned certificate of title to the Commission, accompanied by evidence satisfactory to the Commission that all outstanding liens have been released, with the application for transfer of title. The application shall contain all the information required by the Commission for the transfer in order to identify the vessel and the new owner. The application shall show any and all new liens and encumbrances on the vessel, in order of priority, incurred by the owner. The nature of the new liens and encumbrances shall also be given, along with the name and address of all secured parties.

"§ 75A-38. Commission's records; fees.

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of twenty dollars (\$20.00) ~~for to~~ issue of each ~~certificate of title, and a new or transfer certificate of title.~~ The Commission shall charge a fee of ten dollars (\$10.00) for each transfer of title, duplicate title, or duplicate title it issues and for the recording of a supplemental lien.

"§ 75A-39. Duplicate certificate of title.

The Commission may issue a duplicate certificate of title plainly marked "duplicate" across its face upon application by the person entitled to hold the certificate if the Commission is satisfied that the original certificate has been lost, stolen, mutilated, destroyed, or has become illegible. Mutilated or illegible certificates shall be returned to the Commission with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the ~~Commission for cancellation.~~ Commission. A duplicate certificate of title, not bearing the word "duplicate" across its face, shall be issued for anyone having an address change or name change so long as the original title is surrendered and the appropriate fees paid as provided in G.S. 75A-38(b). If the original certificate of title is not surrendered to the Commission, the duplicate certificate of title shall be plainly marked "duplicate" across its face.

"§ 75A-40. Certificate to show security interests.

The Commission, after receiving an application for a certificate of title ~~to a watercraft,~~ for a vessel, shall, upon issuing the certificate of title to the owner, show upon the face of the certificate of title all security interests in the order of their priority as shown in the application.

"§ 75A-41. Security interests subsequently created.

Except for security interests in ~~watercraft-vessels~~ that are inventory held for sale, security interests created in ~~watercraft vessels~~ by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a ~~blank form~~ furnished for that purpose, setting forth ~~the~~ all security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the ~~same security interests be recorded and recorded,~~ shall upon surrender of the certificate of title covering the ~~watercraft, shall thereupon vessel,~~ issue a new certificate of title showing ~~their~~ any security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party ~~from whom the prior certificate was obtained.~~ of first priority listed on the certificate of title.

"§ 75A-42. Certificate as notice of security interest.

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the ~~watercraft exists and the vessel exists.~~ No other recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is ~~not~~ necessary and shall not be required. ~~Watercraft, Vessels,~~ other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect~~ effect, shall be exempt from the provisions of G.S. 25-9-309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect.

"§ 75A-43. Security interest may be filed within 30 days after purchase.

If application for the recordation of a security interest to be placed upon a ~~watercraft~~ vessel is filed in the principal office of the Commission within 30 days from the date of the applicant's purchase of the ~~watercraft,~~ vessel, it shall be valid to all persons,

including the State, as if the recordation had been done on the day the security interest was acquired.

"§ 75A-44. Priority of security interests shown on certificates.

Except for security interests in ~~watercraft-vessels~~ that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the ~~watercraft-vessel~~ however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed.

"§ 75A-45. Legal holder of certificate of title subject to security interest.

The certificate of title of a ~~watercraft~~vessel shall be delivered to the person holding the security interest having first priority upon the ~~watercraft~~ vessel and retained by that person until the entire amount of the security interest is fully paid by the owner of the ~~watercraft~~. vessel. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner of the ~~watercraft~~. vessel.

"§ 75A-46. Release of security interest shown on certificate of title.

An owner, upon securing the release of any security interest upon a ~~watercraft-vessel~~ shown upon the certificate of title issued for the ~~watercraft~~,vessel, may exhibit the documents evidencing the release, signed by the person or persons making the release, and the certificate of title to the Commission. When it is impossible to secure the release from the secured party, the owner may exhibit to the Commission any available evidence showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid. ~~When-If the Commission is satisfied as to the genuineness and regularity of the satisfied debt, determines that the secured debt has been satisfied in full,~~ the Commission shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the security interest which the Commission shall attach to the outstanding certificate of title.

"§ 75A-47. Surrender of certificate required when security interest paid.

It is unlawful and constitutes a Class 1 misdemeanor for a secured party who holds a certificate of title as provided in this Article to refuse or fail to surrender the certificate of title to the person legally entitled to it within 10 days after ~~his~~the security interest has been paid and satisfied.

"§ 75A-48. Levy of execution, etc.

A levy made by virtue of an execution or other proper court order, upon a ~~watercraft~~ vessel for which a certificate of title has been issued by the Commission, shall constitute a lien, subsequent to security interests previously recorded by the Commission and subsequent to security interests in inventory held for sale and perfected as otherwise permitted by law, if and when the officer making the levy reports to the Commission at its principal office, on forms provided by the Commission, that the levy has been made and that the ~~watercraft~~ vessel levied upon has been seized by and is in the custody of the officer. Should the lien thereafter be satisfied or should the ~~watercraft~~ vessel levied upon and seized thereafter be released by the officer, ~~he-the officer~~ shall immediately report that fact to the Commission at its principal office. ~~Any owner who, after~~ After a levy and seizure by an officer and before the officer reports the levy and seizure to the Commission, any person who fraudulently ~~assigns or transfers his title to or interest in the watercraft, or assigns, transfers,~~ causes the certificate of title to be assigned or

transferred, or causes a security interest to be shown upon ~~such~~ the certificate of title, is guilty of a Class 1 misdemeanor.

"§ 75A-49. Registration prima facie evidence of ownership; rebuttal.

~~Issuance of registration under the provisions of this Chapter shall be prima facie evidence of ownership of a watercraft and entitlement to a certificate of title under the provisions of this Article, but the registration and certificate of title shall be subject to rebuttal.~~ A valid certificate of number issued under the provisions of this Chapter, or any similar document issued under the jurisdiction of any other state or country, shall be prima facie evidence of ownership of a vessel and entitlement to a certificate of title under the provisions of this Article, but ownership established by such documents shall be subject to rebuttal."

SECTION 3. This act becomes effective January 1, 2007, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 11:50 a.m. on the 3rd day of August, 2006.

S.B. 686

Session Law 2006-186

AN ACT TO AMEND RESTRICTIONS ON THE PURCHASE AND SALE OF PSEUDOEPHEDRINE PRODUCTS CONTAINED IN ARTICLE 5D OF CHAPTER 90 OF THE GENERAL STATUTES, THE "METHAMPHETAMINE LAB PREVENTION ACT OF 2005," IN ORDER TO COMPLY WITH FEDERAL LAW, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-113.52 reads as rewritten:

"§ 90-113.52. Pseudoephedrine: restrictions on sales.

(a) ~~A pseudoephedrine product whose sole active ingredient is pseudoephedrine in strength of 30 milligrams or more per tablet or caplet in the form of a tablet, caplet, or gel cap~~ shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission

shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point boldface type at the top of every page substantially similar to the following: "NORTH CAROLINA LAW STRICTLY PROHIBITS A SINGLE TRANSACTION THE PURCHASE OF MORE THAN TWO PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (3.6 GRAMS TOTAL) PER DAY, (SIX GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE (9 GRAMS TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES." If the form attesting to the validity of this information is to be signed by the purchaser in electronic format, the retailer may choose to display in a clear and conspicuous manner the statement on a sign to be placed immediately adjacent to the device on which the electronic signature will be obtained, in lieu of including the full statement in electronic format. If the retailer chooses to display the statement on a sign rather than in electronic format, the retailer shall: (i) instruct the purchaser prior to signing to read the statement; and (ii) include on the form for signature contained in the electronic device a statement substantially similar to the following: "I have read, understand, and agree with the statement just shown to me concerning the requirements under State law pertaining to pseudoephedrine purchases." Display of the sign in this manner shall satisfy the signage requirements of G.S. 90-113.54.

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article."

SECTION 2. G.S. 90-113.53 reads as rewritten:

"§ 90-113.53. Pseudoephedrine transaction limits.

(a) No person shall deliver to any one person, attempt to deliver to any one person, purchase, or attempt to purchase at retail more than two packages containing a combined total of more than 3.6 grams of any pseudoephedrine products per calendar day. No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter retail sale more than two packages containing a combined total of more than six grams of any pseudoephedrine products. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than three packages containing a combined total of more than ~~nine~~ 9 grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article."

SECTION 3. G.S. 90-113.54 reads as rewritten:

"§ 90-113.54. Posting of signs.

(a) A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale ~~stating:~~ substantially similar to the following: "North Carolina law strictly prohibits a single transaction the purchase of more than two packages (~~six~~ (3.6 grams total) of certain products containing pseudoephedrine per day, and ~~no~~ more than three packages (~~nine~~ (9 grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers.

(b) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article."

SECTION 4. Article 5D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-113.61. Regulation of pseudoephedrine products in the form of liquids, liquid capsules, gel capsules, and pediatric products.

Except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article, any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction shall not be subject to requirements under this Article, but such products shall be subject to the requirements of the Combat Methamphetamine Act of 2005, Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177."

SECTION 5. Section 4 of this act becomes effective September 30, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 11:52 a.m. on the 3rd day of August, 2006.

H.B. 1848

Session Law 2006-187

AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES
ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD,

CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-321. Collection of offender fines and fees assessed by the court.

The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders."

SECTION 1.(b) G.S. 7A-343 reads as rewritten:

"§ 7A-343. Duties of Director.

The Director is the Administrative Officer of the Courts, and his duties include the following:

...

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service;

..."

SECTION 2.(a) G.S. 1A-1, Rule 5(e), reads as rewritten:

- "(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by ~~telefacsimile transmission~~ electronic means. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by ~~telefacsimile transmission~~ electronic means, filing may be made by the ~~transmission~~ electronic means when, in the manner, and to the extent provided therein."

SECTION 2.(b) G.S. 7A-343(9a) reads as rewritten:

- "(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction

processing and access to court information systems pursuant to G.S. 7A-343.2; and".

SECTION 2.(c) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-49.5. Statewide electronic filing in courts.

(a) The General Assembly finds that the electronic filing of pleadings and other documents required to be filed with the courts may be a more economical, efficient, and satisfactory procedure to handle the volumes of paperwork routinely filed with, handled by, and disseminated by the courts of this State, and therefore authorizes the use of electronic filing in the courts of this State.

(b) The Supreme Court may adopt rules governing this process and associated costs and may supervise its implementation and operation through the Administrative Office of the Courts. The rules adopted under this section shall address the waiver of electronic fees for indigents.

(c) The Administrative Office of the Courts may contract with a vendor to provide electronic filing in the courts, provided that the costs for the hardware and software are not paid using State funds.

(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory court costs, as a result of electronic filing, shall be deposited in the Court Information Technology Fund in accordance with G.S. 7A-343.2."

SECTION 2.(d) G.S. 7A-343.2 reads as rewritten:

"§ 7A-343.2. Court Information Technology Fund.

The Court Information Technology Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5 shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs. The Director shall report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all moneys collected and deposited in the Fund and on the proposed expenditure of those funds collected during the preceding six months."

SECTION 3.(a) Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"§ 114-19.16. Criminal record checks for the Judicial Department.

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor 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 current or prospective employee, volunteer, or contractor 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 Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3.(b) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16 and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 4.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-202. Permanency mediation.

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during

or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 4.(b) The Administrative Office of the Courts may use funds available during the 2006-2007 fiscal year to implement the provisions of this section.

SECTION 5.(a) G.S. 7A-314(f) reads as rewritten:

"(f) In a criminal case when a person who any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the State language, and the court appoints a foreign language interpreter to assist that defendant or witness in the case, party or witness, the reasonable fee for the interpreter's services, as set by the court, are services is payable from funds appropriated to the Administrative Office of the Courts. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 5.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 6. G.S. 7A-39 reads as rewritten:

"§ 7A-39. ~~Adverse weather cancellation~~Cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other comparable emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief Justice to Extend Statutes of Limitations. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of

limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

- (1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the courthouse, ~~including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.~~courthouse.
- (2) Entry of order. – The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon ~~being filed in the office of the clerk of superior court of that county.~~the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised."

SECTION 7.(a) If Senate Bill 1741, 2005 Regular Session, becomes law, then G.S. 7A-133(c), as amended by Section 14.5 of that act, reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min	Additional Seats of Court
Camden	~~1~~ <u>3</u>	
Chowan	~~2~~ <u>3</u>	
Currituck	~~1~~ <u>4</u>	
Dare	~~3~~ <u>6</u>	
Gates	2	
Pasquotank	~~3~~ <u>5</u>	
Perquimans	~~2~~ <u>3</u>	
Martin	4	
Beaufort	~~4~~ <u>5.05</u>	
Tyrrell	~~1~~ <u>3</u>	
Hyde	~~2~~ <u>3.5</u>	
Washington	~~3~~ <u>4</u>	
Pitt	~~10~~ <u>10.5</u>	Farmville Ayden
Craven	~~7~~ <u>10</u>	Havelock
Pamlico	~~2~~ <u>3</u>	
Carteret	~~6~~ <u>9</u>	

Sampson	~~6~~ <u>7</u>	
Duplin	<u>8</u>	
Jones	<u>2</u>	
Onslow	~~8~~ <u>11</u>	
New Hanover	~~6~~ <u>11</u>	
Pender	~~4~~ <u>4.8</u>	
Halifax	~~9~~ <u>12</u>	Roanoke Rapids, Scotland Neck
Northampton	~~5~~ <u>5.25</u>	
Bertie	~~4~~ <u>5</u>	
Hertford	~~5~~ <u>6</u>	
Nash	~~7~~ <u>9</u>	Rocky Mount
Edgecombe	~~4~~ <u>7</u>	Rocky Mount
Wilson	~~4~~ <u>7</u>	
Wayne	~~5~~ <u>9</u>	Mount Olive
Greene	~~3~~ <u>4</u>	
Lenoir	~~4~~ <u>7</u>	La Grange
Granville	~~3~~ <u>7</u>	
Vance	~~3~~ <u>6</u>	
Warren	~~3~~ <u>3.5</u>	
Franklin	~~3~~ <u>7</u>	
Person	~~3~~ <u>4</u>	
Caswell	~~2~~ <u>4</u>	
Wake	~~12~~ <u>18.5</u>	Apex, Wendell, Fuquay- Varina, Wake Forest
Harnett	~~7~~ <u>10</u>	Dunn
Johnston	~~10~~ <u>11</u>	Benson, Clayton, Selma
Lee	~~4~~ <u>5.5</u>	
Cumberland	~~10~~ <u>19</u>	
Bladen	~~4~~ <u>5</u>	
Brunswick	~~4~~ <u>9</u>	
Columbus	~~6~~ <u>9.5</u>	Tabor City
Durham	~~8~~ <u>13</u>	
Alamance	~~8~~ <u>12</u>	Burlington
Orange	~~4~~ <u>9</u>	Chapel Hill
Chatham	~~3~~ <u>6</u>	Siler City
Scotland	~~3~~ <u>5</u>	
Hoke	~~4~~ <u>5</u>	
Robeson	~~9~~ <u>15</u>	Fairmont, Maxton, Pembroke, Red Springs, Rowland,

Rockingham	~~4~~ <u>9</u>	St. Pauls Reidsville, Eden, Madison
Stokes	~~2~~ <u>5</u>	
Surry	~~5~~ <u>9</u>	Mt. Airy
Guilford	~~20~~ <u>24.4</u>	High Point
Cabarrus	~~5~~ <u>9</u>	Kannapolis
Montgomery	~~3~~ <u>5</u>	
Randolph	~~5~~ <u>10</u>	Liberty
Rowan	~~5~~ <u>9</u>	
Stanly	~~5~~ <u>6</u>	
Union	~~4~~ <u>7</u>	
Anson	~~4~~ <u>5</u>	
Richmond	~~5~~ <u>6</u>	Hamlet
Moore	~~5~~ <u>6.5</u>	Southern Pines
Forsyth	~~3~~ <u>15</u>	Kernersville
Alexander	~~2~~ <u>4</u>	
Davidson	~~7~~ <u>10</u>	Thomasville
Davie	~~2~~ <u>4</u>	
Iredell	~~4~~ <u>9</u>	Mooresville
Alleghany	~~1~~ <u>2</u>	
Ashe	~~3~~ <u>4</u>	
Wilkes	~~4~~ <u>6</u>	
Yadkin	~~3~~ <u>4</u>	
Avery	~~3~~ <u>4</u>	
Madison	~~4~~	
Mitchell	~~3~~ <u>4</u>	
Watauga	~~4~~ <u>5</u>	
Yancey	~~2~~ <u>3</u>	
Burke	~~4~~ <u>6.75</u>	
Caldwell	~~4~~ <u>7</u>	
Catawba	~~6~~ <u>10</u>	Hickory
Mecklenburg	~~15~~ <u>26.50</u>	
Gaston	~~12~~ <u>17</u>	
Cleveland	~~5~~ <u>8</u>	
Lincoln	~~4~~ <u>6</u>	
Buncombe	~~6~~ <u>15</u>	
Henderson	~~4~~ <u>6.5</u>	
McDowell	~~3~~ <u>4.5</u>	
Polk	~~3~~ <u>4</u>	
Rutherford	~~6~~ <u>7</u>	
Transylvania	~~2~~ <u>4</u>	
Cherokee	~~3~~ <u>4</u>	
Clay	~~1~~ <u>2</u>	
Graham	~~2~~	
Haywood	~~5~~ <u>6.75</u>	Canton
Jackson	~~3~~ <u>5</u>	
	688	

Macon 3 3.5
Swain 2. 3.75."

SECTION 7.(b) G.S. 7A-132 reads as rewritten:

"§ 7A-132. Judges, district attorneys, full-time assistant district attorneys and magistrates for district court districts.

Each district court district shall have one or more judges and one district attorney. Each county within each district shall have at least one magistrate.

For each district the General Assembly shall prescribe the numbers of district judges, and the numbers of full-time assistant district attorneys. For each county within each district the General Assembly shall prescribe a minimum ~~and a maximum~~ number of magistrates."

SECTION 7.(c) G.S. 7A-171(a) reads as rewritten:

"§ 7A-171. Numbers; appointment and terms; vacancies.

(a) The General Assembly shall establish a minimum ~~and a maximum~~ quota of magistrates for each county. In no county shall the minimum quota be less than one. The number of magistrates in a county, ~~within~~ above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 8. Section 4 of S.L. 2006-32 reads as rewritten:

"SECTION 4. The ~~Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the~~ Legislative Research Commission and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

- (1) Funding mechanisms;
- (2) Target populations;
- (3) Interagency collaboration at the State and local levels; and
- (4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The ~~Commissions~~ Commission may report ~~their~~ its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 9. If Senate Bill 1741, 2005 Regular Session, becomes law, then Section 14.17 of that act is amended by adding a new subsection to read:

"SECTION 14.17.(b) This section applies to persons summoned to serve as jurors on or after August 7, 2006."

SECTION 10. The Administrative Office of Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

SECTION 11. Article 30 of Chapter 7A of the General Statutes reads as rewritten:

"Article 30.

"Judicial Standards Commission.

"§ 7A-374.1. Purpose.

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

"§ 7A-374.2. Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

- (1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.
- (2) "Commission" means the North Carolina Judicial Standards Commission.
- (3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.
- (4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.
- (5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
- (6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.
- (7) "Public reprimand" means a written action of the Commission issued upon a finding by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.
- (8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.
- (9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of

time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court.

"§ 7A-375. Judicial Standards Commission.

(a) The Judicial Standards Commission shall consist of: of the following residents of North Carolina: one Court of Appeals judge, ~~one~~two superior court judge, ~~judges~~, and ~~one~~two district court judge, ~~judges~~, each appointed by the Chief Justice of the Supreme Court; ~~two~~four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and ~~two~~four citizens who are not judges, active or retired, nor members of the State Bar, ~~appointed by the Governor~~two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. The Court of Appeals judge shall act as chair of the Commission.

(b) The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of ~~other~~ Commission members shall be for six years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years. years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for ~~his~~the member's appointment, ~~he~~that person ceases to be a member. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place ~~he~~the alternate member takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member ~~disqualifies himself, becomes disqualified,~~ or is successfully challenged for cause, ~~his~~the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of ~~his~~the member's term only to participate until the conclusion of a ~~formal~~disciplinary proceeding begun before expiration of ~~his~~the member's term. Such participation shall not prevent ~~his~~the successor from taking office, but the successor may not participate in the proceeding for which ~~his~~the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.

(e) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.

(f) The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(g) The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court.

"§ 7A-376. ~~Grounds for censure or removal.~~Grounds for discipline by Commission; censure, suspension, or removal by the Supreme Court.

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of censure, suspension, or removal, may issue to the judge a private letter of caution or may issue to the judge a public reprimand.

(b) Upon recommendation of the Commission, the Supreme Court may ~~censure or remove~~censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform ~~his~~the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. ~~Upon recommendation of the Commission, the Supreme Court may remove any judge for mental or physical incapacity interfering with the performance of his duties, which is, or is likely to become, permanent.~~A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if ~~he~~the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for other than mental or physical incapacity receives no retirement compensation, and is disqualified from holding further judicial office.~~

"§ 7A-377. ~~Procedures; employment of executive secretary, special counsel or investigator.~~Procedures.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of

Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission ~~is authorized to~~ may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for ~~contempt~~, and to ~~prescribe its own rules of procedure.~~ contempt. No justice or judge shall be recommended for ~~censure~~ censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any ~~preliminary~~ investigation ~~which that~~ the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) ~~After the preliminary~~ If, after an investigation is completed, ~~and if the~~ Commission concludes that ~~formal~~ disciplinary proceedings should be instituted, the notice and ~~complaint~~ statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. ~~Formal~~ Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to ~~censure~~ censure, suspend, or remove any ~~justice or~~ judge. A respondent who is recommended for ~~censure or removal~~ censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if ~~he~~ the respondent has objections to it, to have the record settled by the ~~Commission~~ Commission's chair. ~~He~~ The respondent is also entitled to present a brief and to argue ~~his~~ the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of ~~censure~~ censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(b) ~~The chair of the Commission is authorized to employ an executive secretary to assist the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel.~~

~~For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.~~

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

"§ 7A-378. ~~Censure~~ Censure, suspension, or removal of justice of Supreme Court.

(a) The recommendation of the Judicial Standards Commission for ~~censure~~ censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for ~~censure~~ censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for ~~censure~~ censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the ~~commission~~ Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service."

SECTION 12. In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

- (1) The initial terms of the new district court judge and of one new member of the North Carolina Bar appointed to the Commission effective January 1, 2007, shall be three-year terms.
- (2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be six-year terms.
- (3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.
- (4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.

SECTION 13. Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, and 9 of this act become effective July 1, 2006. Sections 11 and 12 become effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 11:53 a.m. on the 3rd day of August, 2006.

S.B. 846

Session Law 2006-188

AN ACT MODERNIZING THE MANNER IN WHICH BAIL BONDSMEN REGISTER THEIR LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-71-140 reads as rewritten:

"§ 58-71-140. Registration of licenses and power of appointments by insurers.

(a) ~~No~~ Before the date of the notice provided for in subsection (e) of this section, ~~no~~ professional bail bondsman shall become a surety on an undertaking unless he or she has registered his or her current license in the office of the clerk of superior court in the county in which he or she resides and a certified copy of the same with the clerk of superior court in any other county in which he or she shall write bail bonds.

(b) ~~A~~ Before the date of the notice provided for in subsection (e) of this section, a surety bondsman shall register his or her current surety bondsman's license and a certified copy of his or her power of appointment with the clerk of superior court in the county in which the surety bondsman resides and with the clerk of superior court in any other county in which the surety bondsman writes bail bonds on behalf of an insurer.

(c) ~~No~~ Before the date of the notice provided for in subsection (e) of this section, ~~no~~ runner shall become surety on an undertaking on behalf of a professional bondsman unless that runner has registered his or her current license and a certified copy of his or her power of attorney in the office of the clerk of superior court in the county in which the runner resides and with the clerk of superior court in any other county in which the runner writes bail bonds on behalf of the professional bondsman.

(c1) On or after the date of the notice provided for in subsection (e) of this section, all licensed professional bail bondsmen, surety bondsmen, and runners shall register in the statewide Electronic Bondsmen Registry in accordance with subsection (e) of this section.

(d) Professional bondsmen, surety bondsmen, and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts. The affidavit shall include, but not be limited to:

- (1) If applicable, a statement that the bondsman has not, nor has anyone for the bondsman's use, been promised or received any collateral, security, or premium for executing this appearance bond.
- (2) If promised a premium, the amount of the premium promised and the due date.
- (3) If the bondsman has received a premium, the amount of premium received.
- (4) If given collateral security, the name of the person from whom it is received and the nature and amount of the collateral security listed in detail.

(e) On or before October 1, 2006, the Administrative Office of the Courts shall establish a statewide Electronic Bondsmen Registry (Registry) for all licenses, powers of appointment, and powers of attorney requiring registration under this section. When the Registry is established, the Administrative Office of the Courts shall notify the Commissioner and the Commissioner shall notify all licensed professional bondsmen, surety bondsmen, runners, and qualified insurance companies of the Registry. On or after the date of that notice, a person may register as required under this section by maintaining a record of each required license, power of appointment, or power of

attorney in the Registry. After a bondsman, surety bondsman, or runner has completed registration in the Registry, he or she is authorized to execute bail bonds pursuant to his or her registered license, power of appointment, or power of attorney in all counties so long as the registered license, power of appointment, or power of attorney remains in effect."

SECTION 2. G.S. 15A-544.7(c) reads as rewritten:

"(c) Execution; Copy to Commissioner of Insurance. – After docketing a final judgment under this section, the clerk shall:

- (1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.
- (2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a ~~copy~~-notice of the judgment, showing the date on which the judgment was docketed."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 11:54 a.m. on the 3rd day of August, 2006.

S.B. 1442

Session Law 2006-189

AN ACT TO REPEAL THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW, AND TO PROVIDE FOR A STUDY ON THE USE OF CLEAR PROCEEDS IN A MANNER THAT WILL ALLOW FOR THE CONTINUATION OF THE USE OF TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS BY LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed. This section applies to Rutherford County only.

SECTION 2. The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 11:55 a.m. on the 3rd day of August, 2006.

S.B. 402

Session Law 2006-190

AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"Article 3B.

~~Energy Conservation of Energy, Water, and Other Utilities in Public Government~~
Facilities."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"§ 143-64.17. **Definitions.**

As used in this Part:

- (1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the ~~facility~~facility or meter, when the alteration, training, or services provide anticipated energy ~~savings~~savings or capture lost revenue. Energy conservation measure includes any of the following:
 - a. Insulation of the building structure and systems within the building.
 - b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.
 - c. Automatic energy control systems.
 - d. Heating, ventilating, or air-conditioning system modifications or replacements.
 - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.
 - f. Energy recovery systems.
 - g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
 - ~~h. Other energy conservation measures.~~
 - i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.

- j. Other energy conservation measures that conserve energy, water, or other utilities.
- (2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating costs—costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel costs, energy costs, or operating costs~~ costs, including captured lost revenues, developed by the governmental unit.
- (2a) "Governmental unit" means either a local governmental unit or a State governmental unit.
- (3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing ~~equipment,~~equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.
- (4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
- (5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.
- (6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:
 - a. The name and address of the governmental unit.
 - b. The name, address, title, and telephone number of a contact person in the governmental unit.
 - c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
 - d. The date, time, and place where proposals must be received.
 - e. The evaluation criteria for assessing the proposals.
 - f. A statement reserving the right of the governmental unit to reject any or all the proposals.
 - g. Any other stipulations and clarifications the governmental unit may require.
- (7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

SECTION 3. G.S. 143-64.17B(a) reads as rewritten:

"§ 143-64.17B. Guaranteed energy savings contracts.

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

- (1) The term of the contract does not exceed 12-20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.
- (2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing ~~building~~building or utility system."

SECTION 4. The catch line of G.S. 143-64.17G reads as rewritten:

"§ 143-64.17G. Report on guaranteed energy savings ~~contracts~~contracts entered into by local governmental units.

SECTION 5. The catch line of G.S. 143-64.17H reads as rewritten:

"§ 143-64.17H. ~~Guaranteed~~Report on guaranteed energy savings ~~contract reporting requirements~~contracts entered into by State governmental units."

SECTION 6. G.S. 142-63 reads as rewritten:

"§ 142-63. Authorization of financing contract.

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~fifty million dollars (\$50,000,000)~~one hundred million dollars (\$100,000,000) at any one time."

SECTION 7. G.S. 142-64(b)(2) reads as rewritten:

- "(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:
- a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than ~~12 years from the date the financing contract is entered~~20 years from the date of acceptance of the project.
 - b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.
 - c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it."

SECTION 8. G.S. 143-64.10 reads as rewritten:

"§ 143-64.10. Findings; policy.

(a) The General Assembly ~~hereby finds~~finds all of the following:

- (1) That the State shall take a leadership role in aggressively undertaking ~~energy~~the conservation of energy, water, and other utilities in North ~~Carolina~~Carolina.
- (2) That State facilities have a significant impact on the State's consumption of ~~energy~~energy, water, and other utilities.

- (3) That ~~energy conservation~~ practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of ~~energy; energy, water, and other utilities.~~
- (4) That the cost of the ~~energy~~ energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial ~~cost;~~ cost.
- (5) That the cost of ~~energy~~ energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the ~~energy~~ energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects ~~energy consumption; and the consumption of energy, water, or other utilities.~~
- (6) That State government shall undertake a program to reduce ~~energy~~ the use of energy, water, and other utilities in State facilities and equipment in those facilities in order to provide its citizens with an example of ~~energy-use~~ energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that ~~energy conservation~~ practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and in the purchase, operation, and maintenance of equipment for State facilities."

SECTION 9. G.S. 143-64.11(2) reads as rewritten:

"(2) "Energy-consumption analysis" means the evaluation of all energy-consuming ~~systems~~ systems, including systems that consume water or other utilities, and components of these systems by demand and type of ~~energy~~ energy or other utility use, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions."

SECTION 10. G.S. 143-64.11(2b) reads as rewritten:

"(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

- a. Equipment used to heat, cool, or ventilate the facility;
- b. Equipment used to heat water in the facility;
- c. Lighting systems;
- d. On-site equipment used to generate electricity for the facility;
- e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
- f. Energy conservation ~~measures—measures~~ as defined in G.S. 143-64.17, in the facility design and construction that decrease the ~~energy~~ energy, water, or other utility requirements of the facility."

SECTION 11. G.S. 143-64.11(3) reads as rewritten:

"(3) "Facility" means a building or a group of buildings served by a central ~~energy~~-distribution system for energy, water, or other utility or components of a central ~~energy~~-distribution system."

SECTION 12. G.S. 143-64.12 reads as rewritten:

"§ 143-64.12. Authority and duties of State agencies.

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, ensuring the use of life-cycle cost analyses and ~~energy conservation practices~~practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve ~~energy~~ efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive ~~energy management~~program to manage energy, water, and other utility use for State government. Each State agency shall develop and implement ~~an energy~~a management plan that is consistent with the State's comprehensive ~~energy management program~~program to manage energy, water, and other utility use.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4."

SECTION 13. G.S. 143-64.15 reads as rewritten:

"§ 143-64.15. Life-cycle cost analysis.

(a) A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

- (1) The coordination, orientation, and positioning of the facility on its physical ~~site~~site.
- (2) The amount and type of fenestration employed in the ~~facility~~facility.
- (3) Thermal characteristics of materials and the amount of insulation incorporated into the facility ~~design~~design.
- (4) The variable occupancy and operating conditions of the facility, including illumination ~~levels~~and levels.
- (5) Architectural features ~~which~~that affect ~~energy consumption~~the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

- (1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this ~~section;~~section.
- (2) The initial estimated cost of each energy-consuming system being compared and ~~evaluated;~~evaluated.
- (3) The estimated annual operating cost of all utility ~~requirements;~~requirements.
- (4) The estimated annual cost of maintaining each energy-consuming ~~system; and~~system.
- (5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) ~~The General Assembly requires each~~Each entity ~~to shall~~ conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air-conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of ~~energy-cost~~ measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems ~~utilities~~ in a facility shall include, but not be limited ~~to;~~to, all of the following:

- (1) The comparison of two or more system ~~alternatives;~~alternatives.
- (2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating ~~period;~~and period.
- (3) The engineering evaluation of the ~~energy-consumption of energy,~~ water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs."

SECTION 14. This act is effective when it becomes law and applies to contracts entered into or renewed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 11:55 a.m. on the 3rd day of August, 2006.

S.B. 729

Session Law 2006-191

AN ACT TO EXEMPT NEW MOTOR VEHICLE DEALERS FROM THE USED MOTOR VEHICLE DEALERS' COURSE REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-288(a1) reads as rewritten:

"(a1) A used motor vehicle dealer may obtain a license by filing an application, as prescribed in subsection (a) of this section, and providing the following:

- (1) The required fee.
- (2) Proof that the applicant, within the last 12 months, has completed a 12-hour licensing course approved by the Division if the applicant is seeking an initial license and a six-hour course approved by the Division if the applicant is seeking a renewal license. The requirements of this subdivision do not apply to a used motor vehicle dealer the primary business of which is the sale of salvage vehicles on behalf of insurers or to a manufactured home dealer licensed under G.S. 143-143.11 who complies with the continuing education requirements of G.S. 143-143.11B. The requirement of this subdivision does not apply to persons age 62 or older as of July 1, 2002, who are seeking a renewal license. This subdivision also does not apply to an applicant who holds a license as a new motor vehicle dealer as defined in G.S. 20-286(13) and operates from an established showroom one mile or less from the established showroom for which the applicant seeks a used motor vehicle dealer license. An applicant who also holds a license as a new motor vehicle dealer may designate a representative to complete the licensing course required by this subdivision.
- (3) If the applicant is an individual, proof that the applicant is at least 18 years of age and proof that all salespersons employed by the dealer are at least 18 years of age.
- (4) The application for a dealer license plate."

SECTION 2. This act becomes effective January 1, 2007, and applies to applications for used motor vehicle dealer license filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 11:56 a.m. on the 3rd day of August, 2006.

H.B. 1024**Session Law 2006-192**

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE INSTANT RUNOFF METHOD OF VOTING WOULD BE USED IN LOCAL ELECTIONS; TO SET THE DATE OF FUTURE SECOND PRIMARIES AT SEVEN WEEKS AFTER THE FIRST PRIMARY; TO REVISE THE MUNICIPAL ELECTION SCHEDULE TO PROVIDE MORE TIME FOR ABSENTEE VOTING AND ELECTION ADMINISTRATION; TO CONFORM NORTH CAROLINA ABSENTEE VOTING LAW TO THE U.S. UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT; TO REVISE THE PROCEDURE FOR SELECTION OF PRECINCTS AND OTHER VOTING UNITS FOR SAMPLE COUNTS; TO PROVIDE FOR FILLING MID-ELECTION-YEAR JUDICIAL VACANCIES; AND TO FURTHER AMEND THE LAW CONCERNING JUDICIAL CANDIDACIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The State Board of Elections shall select local jurisdictions in which to conduct a pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

- (1) Up to 10 cities for the 2007 elections.
- (2) Up to 10 counties for the 2008 elections.

In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

As used in this section, "instant runoff voting" means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for

each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multi-seat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

SECTION 1.(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly.

SECTION 2. G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. – If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held ~~four~~ seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit-written affirmation of ~~transfer of precinct, change of address within the county~~ under the provisions of G.S. 163-82.15, ~~before-in~~ the first primary may vote in the second primary without having to refile ~~the affidavit of transfer that written affirmation~~ if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

SECTION 3. G.S. 163-279 reads as rewritten:

"§ 163-279. Time of municipal primaries and elections.

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

- (1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.
- (2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the ~~sixth-second~~ Tuesday ~~before the election,~~ after Labor Day, and the second primary, if required, shall be held on the ~~third-fourth~~ Tuesday before the election.
- (3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.
- (4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and

the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1)."

SECTION 4. G.S. 163-291 reads as rewritten:

"§ 163-291. Partisan primaries and elections.

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

- (1) The dates of primary and election shall be as provided in G.S. 163-279.
- (2) A candidate seeking party nomination for municipal or district office shall file ~~his~~ notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election, except:
 - a. In 2001 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
 - b. In 2002 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the

authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

- (4) The municipal ballot may not be combined with any other ballot.
- (5) The canvass of the primary and second primary shall be held on the seventh day following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.
- (6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Thursday following the canvass of the first primary."

SECTION 5. G.S. 163-294.2 reads as rewritten:

"§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

"Date _____;

I hereby file notice that I am a candidate for election to the office of _____(at large) (for the _____ Ward) in the regular municipal election to be held in _____ on _____, _____
(municipality)

Signed _____
(Name of Candidate)

Witness: _____

FOR THE BOARD OF ELECTIONS"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections or the director of elections of that county, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc." A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include

with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election, except:

- (1) In 2001 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- (2) In 2002 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first."

SECTION 6. G.S. 163-245 reads as rewritten:

"§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail ~~and~~ or to vote by ~~military~~ absentee ballot or both in the manner provided in this Article.

- (b) The provisions of this Article shall apply to the following persons:
- (1) Individuals serving in the armed forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.
 - (2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
 - (3) Disabled war veterans in United States government hospitals.
 - (4) Civilians attached to and serving outside the United States with the armed forces of the United States.
 - (5) Members of the Peace Corps.
 - (6) Other individuals meeting the definitions of "absent uniformed services voter" and "overseas voter" in the federal Uniformed and Overseas Citizens Absentee Voting Act.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act."

SECTION 7.(a) G.S. 163-182.1(b) reads as rewritten:

"(b) Procedures and Standards. – The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

- (1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential

ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

- (2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
 - a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
 - b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
 - c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 7.(b) G.S. 163-182.2(b) reads as rewritten:

"(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

- (1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.
- (1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county

is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

- (2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.
- (3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 8.(a) G.S. 163-329 reads as rewritten:

"§ 163-329. Elections to fill vacancy in office created after primary filing period to use plurality method. period opens.

(a) General. – If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the ~~plurality method as provided in subsection (b)~~(b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

~~(b) Plurality Election Rules. — Elections under this section shall be conducted using the following rules:~~

- ~~(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.~~

- (2) ~~When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.~~
- (3) ~~When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.~~
- (4) ~~If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.~~
- (5) ~~Except as provided in this section, the provisions of this Article apply to elections conducted under this section.~~

(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

- (1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.
- (2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the 'instant runoff voting' method shall be used to determine the winner. Under 'instant runoff voting,' voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.

- (3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(c) Applicable Provisions. – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

- (1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.
- (2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.
- (3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.
- (4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round."

SECTION 8.(b) G.S. 163-327.1 reads as rewritten:

"§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

- (1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.
- (2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy.
- (3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. The-Except as provided in G.S. 163-329, the persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms. "

SECTION 9.(a) G.S. 163-327 is repealed.

SECTION 9.(b) G.S. 163-328 reads as rewritten:

"§ 163-328. Failure of candidates to file; death or other disqualification of a ~~candidate before election.~~ candidate; no withdrawal from candidacy.

(a) **Insufficient Number of Candidates. –** If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(a1) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) ~~Death or Other Disqualification of Candidate; Earlier Non-Primary Vacancies; Reopening Filing.~~ – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, or if a primary has occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and ~~such that~~ election shall be conducted ~~on the plurality basis as provided in G.S. 163-329(b1).~~

(c) ~~Vacancy Caused by Nominated Candidate; Later Vacancies; Ballots Not Reprinted.~~ – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's ~~death,~~ death or other disqualification, ~~or resignation,~~ and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

(d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. – After the close of the candidate filing period, a candidate who has filed a notice of candidacy for the office, who has not withdrawn notice before the close of filing as permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.

(e) Death, Disqualification, or Failure to Qualify After Election. – If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before he has qualified by taking the oath of office, or fails to qualify by refusing to take

the oath of office, the office shall be deemed vacant and shall be filled as provided by law."

SECTION 10. Article 22E of Chapter 163 of the General Statutes reads as rewritten:

"§ 163-278.64A. Special participation provisions for candidates in vacancy elections.

(a) Participation Provisions Modified. – Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this Article, including G.S. 163-278.67, to those elections.

(b) Qualifying. – The State Board of Elections shall designate a special qualifying period of no less than four weeks for these candidates, beginning at the close of the notice-of-candidacy filing period. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. – Certified candidates shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general election. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65."

SECTION 11. G.S. 163-278.65(c) reads as rewritten:

"(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible ~~funding~~, funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding."

SECTION 12. G.S. 163-278.66(a) reads as rewritten:

"(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess of three thousand dollars (\$3,000)~~ in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds~~, five thousand dollars (\$5,000). After this 24-hour filing, the noncertified candidate or independent

expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars (\$1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars (\$1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board."

SECTION 13. G.S. 163-278.68(b) reads as rewritten:

"(b) Advisory Council for the Public Campaign Fund. – There is established under the Board the Advisory Council for the Public Campaign Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Fund. The Advisory Council shall consist of five members to be appointed as follows:

- (1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.
- (2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.
- (3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full ~~terms~~ terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term."

SECTION 14. G.S. 163-278.69(c) reads as rewritten:

"(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement: "The above statements by candidates do not express or reflect the opinions of the State Board of Elections."

SECTION 14.1. G.S. 163-278.63(a) reads as rewritten:

"(a) Establishment of Fund. – The North Carolina Public Campaign Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, including public education about the Fund, shall be paid from the Fund and not from the General Fund.

Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

SECTION 15. G.S. 163-278.13(e) reads as rewritten:

"(e) This Except as provided in subsections (e2) and (e3) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96."

SECTION 16. G.S. 163-278.13(e2) reads as rewritten:

"(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

- (1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars (\$1,000) except as provided for elsewhere in this subsection.
- (2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars (\$2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.
- (3) No candidate shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. election if that contribution causes the candidate to exceed the "trigger for rescue funds" defined in G.S. 163-278.62(18). This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 17. G.S. 163-278.13 is amended by adding a new subsection to read:

"(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars (\$1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign."

SECTION 18. G.S. 105-159.2 reads as rewritten:

"§ 105-159.2. Designation of tax to North Carolina Public Campaign Financing Fund.

(a) Allocation to the North Carolina Public Campaign Fund. – To ensure the financial viability of the North Carolina Public Campaign Fund established in Article

22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund three dollars (\$3.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount, if the individual agrees. A taxpayer must be given the opportunity to indicate an agreement or objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of agreeing or objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a ~~quarterly~~ monthly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to agree to the allocation of three dollars (\$3.00) of the individual's tax liability to the North Carolina Public Campaign Fund. The Department must make it clear to the taxpayer that the dollars will support a nonpartisan court system, that the dollars will go to the Fund if the taxpayer marks an agreement, and that allocation of the dollars neither increases nor decreases the individual's tax liability. The following statement ~~satisfies the intent of~~ must be used to meet this requirement: "~~Three dollars (\$3.00) will go to the North Carolina Public Campaign Fund to support a nonpartisan court system, if you agree. Your tax remains the same whether or not you agree.~~" 'Mark 'Yes' if you want to designate \$3 of taxes to this special Fund for voter education materials and for candidates who accept spending limits. Marking 'Yes' does not change your tax or refund.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return ~~of that~~ they must comply with the requirements of this section and that a return may not reflect an agreement or objection unless the individual completing the return decided to agree or object after being presented with the statement required by subsection (b) of this section and, as available background information or instructions, the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an agreement or objection. A paid preparer of tax returns may not mark an agreement or objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: "~~The North Carolina N.C. Public Campaign Fund provides an alternative source of campaign money to nonpartisan-qualified candidates for the North Carolina Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance a Voter Guide with~~ educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. Three dollars ~~(\$3.00)~~ from the taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice you make, your tax will not increase, nor will any refund ~~you are entitled to be reduced.~~"

SECTION 19. Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163-278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:57 a.m. on the 3rd day of August, 2006.

S.B. 951

Session Law 2006-193

AN ACT TO REQUIRE A UNIT OF LOCAL GOVERNMENT THAT DISPLACES A PRIVATE COMPANY THAT IS PROVIDING COLLECTION SERVICES FOR SOLID WASTE OR RECOVERED MATERIALS TO GIVE NOTICE OF ITS INTENT TO DO SO OR TO PROVIDE COMPENSATION TO THE DISPLACED PRIVATE COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-37.3 reads as rewritten:

"§ 160A-37.3. **Contract with private solid waste collection firm(s).**

(a) ~~If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a private solid waste collection firm or firms:~~

- ~~(1) On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-37(j) or~~
- ~~(2) On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-37(i) was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and;~~
- ~~(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and~~
- ~~(4) During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and~~
- ~~(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing, unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:~~
- ~~(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or~~

- (7) ~~Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.~~

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

- (1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.
- (2) Pay to the firm the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.
- (3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

- (1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.
- (2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) ~~The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed.~~ At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

- (1) A requirement that the ~~private~~ firm post a performance bond and maintain public liability insurance coverage;

- (2) A requirement that the ~~private~~ firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the ~~private~~ firms, or by the city as to customers not served by the ~~private~~ firms;
- (4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure ~~for~~ substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
- (6) Performance standards, not exceeding city ~~standards,~~ standards existing at the time of notice published pursuant to G.S. 160A-37(b), with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers, and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the ~~private~~ firm under this subsection, ~~such the~~ matters shall be determined by the Local Government Commission.

~~(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.~~

~~(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.~~

(g) The ~~private~~ firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The ~~private~~ firm may appeal to the Local Government

Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the ~~private~~ firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~10 business~~ 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within ~~10 business~~ 30 days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section.

(i) As used in this section, the following terms mean:

- (1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenue shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.
- (2) Firm. – A private solid waste collection firm."

SECTION 2. G.S. 160A-49.3 reads as rewritten:

"§ 160A-49.3. Contract with private solid waste collection firm(s).firms.

(a) ~~If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a private solid waste collection firm or firms:~~

- (1) ~~On the ninetieth day preceding the date of adoption of the resolution of intent in accordance with G.S. 160A-49(j) or~~
- (2) ~~On the ninetieth day preceding the date of adoption of the resolution of consideration in accordance with G.S. 160A-49(i)~~

~~was providing solid waste collection services in the area to be annexed, and is still providing such services on the date of adoption of the resolution of intent, and:~~

- (3) ~~By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated, and~~
- (4) ~~During the 90 day period preceding the date of adoption of the resolution of intent or resolution of consideration provided by subdivisions (1) or (2) of this subsection, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred~~

~~dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated, and~~

- ~~(5) If such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 10 days before the public hearing,~~

~~unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:~~

- ~~(6) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation ordinance to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or~~
- ~~(7) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.~~

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

- (1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.
- (2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.
- (3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

- (1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.
- (2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a

certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall fill notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) The city shall make a good faith effort to provide at least 20 days before the public hearing a copy of the resolution of intent to each private firm providing solid waste collection services in the area to be annexed. At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

- (1) A requirement that the ~~private~~ firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the ~~private~~ firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the ~~private~~ firms, or by the city as to customers not served by the ~~private~~ firms;
- (4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure ~~for~~ substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
- (6) Performance standards, not exceeding city ~~standards~~, standards existing at the time of notice published pursuant to G.S. 160A-49(b) with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot

be reached between the city and the private firm under this subsection, such the matters shall be determined by the Local Government Commission.

(e) ~~The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.~~

(f) ~~As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.~~

(g) The private firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The private firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~40 business~~ 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within ~~40 business~~ 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. – A private solid waste collection firm."

SECTION 3. G.S. 160A-324 reads as rewritten:

"§ 160A-324. Contract with private solid waste collection firm(s).

(a) ~~This section applies to any area to be annexed by an act of the General Assembly which includes an area where a private solid waste collection firm or firms on~~

~~the 90th day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation was:~~

- ~~(1) Providing solid waste collection services in the area to be annexed;~~
- ~~(2) Is still providing such services on the date of enactment of the act;~~
- ~~(3) By reason of such annexation any franchise with a county or arrangements with third parties for solid waste collection will be terminated; and~~
- ~~(4) During the 90-day period preceding the date of introduction, the firm had in such area an average of 50 or more residential customers or a monthly average revenue from nonresidential customers in such area of five hundred dollars (\$500.00) or more; provided that customers shall be included in such calculation only if policies of the city will provide solid waste collection to those customers such that arrangements between the solid waste firm and the customers will be terminated;~~

~~and if such firm makes a written request that it wishes to contract, signed by an officer or owner of the firm, and delivered to the city clerk at least 20 days before the effective date of the annexation provided in the act, unless other arrangements satisfactory to the private solid waste collection firm or firms have been made, the city shall either:~~

- ~~(1) Contract with such solid waste collection firm(s) for a period of two years after the effective date of the annexation act to allow the solid waste collection firm(s) to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section, or~~
- ~~(2) Pay to the solid waste collection firm(s) in lieu of a contract a sum equal to the economic loss determined under subsection (f) of this section.~~

(a) If the area to be annexed described in an act of the General Assembly includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation, was providing solid waste collection services in the area to be annexed, (iii) is still providing such services on the date the act becomes law, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

- (1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.
- (2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.
- (3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have, subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the

effective date of the annexation a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) The city shall make a good faith effort to provide at least 30 days before the effective date of the annexation a copy of the act to each private firm providing solid waste collection services in the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

- (1) A requirement that the ~~private~~ firm post a performance bond and maintain public liability insurance coverage;
- (2) A requirement that the ~~private~~ firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;
- (3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the ~~private~~ firms, or by the city as to customers not served by the ~~private~~ firms;
- (4) A provision that the city may serve customers not served by the firm on the effective date of annexation;
- (5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure, ~~for~~ substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;
- (6) Performance standards, not exceeding city ~~standards,~~ standards existing at the time of notice provided pursuant to subsection (b) of this section, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;
- (7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot

be reached between the city and the private firm under this subsection, ~~such the~~ matters shall be determined by the Local Government Commission.

~~(e) The city may, at any time after one year's operation thereunder, terminate a contract made with the solid waste collection firm under subsection (a) of this section upon payment to said firm of an amount equal to the economic loss determined in subsection (f) of this section, but discounted by the percentage of the contract which has elapsed prior to the effective date of the termination.~~

~~(f) As used in this section, "economic loss" is 12 times the average monthly revenue for the three months prior to the introduction of the bill, collected or due the private firm for residential, commercial, and industrial collection service in the area annexed or to be annexed.~~

(g) If the city fails to offer a contract to the private firm within 30 days following the effective date of the annexation act, the private firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the private firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the private firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~five~~ 30 days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. – A sum equal to 15 times the average gross monthly revenue for the three months prior to the introduction of the bill under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. – A private solid waste collection firm."

SECTION 4. Part 1 of Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in

solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

- (1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.
- (2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.
- (3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within

six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

- (1) Collection. – The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.
- (2) Displacement. – Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:
 - a. Failure to renew a franchise agreement or contract with a private company.
 - b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.

- c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.
- d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.
- e. Providing temporary collection services under a declared state of emergency.
- f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.
- g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.
- (3) Municipal solid waste. – As defined in G.S. 130A-290(18a).
- (4) Unit of local government. – A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both."

SECTION 5. Sections 1 and 2 of this act apply to annexations for which a resolution of intent is adopted on or after January 1, 2007, and Section 3 of this act applies to annexations for which the bill making the annexation is enacted on or after January 1, 2007. Section 4 of this act applies to actions taken on or after that date. This section is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 1:57 p.m. on the 3rd day of August, 2006.

S.B. 1280

Session Law 2006-194

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE, TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF TELEMONITORING EQUIPMENT FOR HOME AND COMMUNITY BASED RECIPIENTS, AND TO PROHIBIT THE ISSUING OF LICENSES FOR HOME CARE AGENCIES FOR ONE YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Division of Medical Assistance, shall implement a pilot program to evaluate the use of telemonitoring equipment in home and community based services. As determined by the Division, the Department shall provide remuneration to home care agencies and other providers for participation in the pilot program. The pilot program shall be implemented by October 1, 2006, and shall evaluate the use of telemonitoring equipment as a tool to improve the health of home and community based recipients

through increased monitoring and responsiveness, and resulting in increased stabilization rates and decreased hospitalization rates. The evaluation must include a representative number of older adults. The Department shall report to the Study Commission on Aging by August 1, 2007. The report shall include findings and recommendations on the cost-effectiveness of telemonitoring and the benefits to individuals and health care providers.

SECTION 2. Beginning January 1, 2007, and for a period of one year thereafter, the Department of Health and Human Services shall not issue any licenses for new home care agencies that intend to offer in-home aide services. This shall not restrict the Department from issuing licenses to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency being acquired. This will allow the Department the time necessary to implement newly adopted home care rules.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 1:58 p.m. on the 3rd day of August, 2006.

H.B. 1846

Session Law 2006-195

AN ACT TO LOWER THE THRESHOLD FROM ONE HUNDRED DOLLARS TO FIFTY DOLLARS FOR ACCEPTING A POLITICAL CONTRIBUTION IN CASH; TO PROHIBIT THE USE OF BLANK PAYEE CHECKS IN CAMPAIGN CONTRIBUTIONS; TO REQUIRE THE REPORTING OF THE IDENTITY OF A CONTRIBUTOR WHO MAKES A CONTRIBUTION OF MORE THAN FIFTY DOLLARS; TO SPECIFY THE TIME PERIOD BY WHICH THE THRESHOLD FOR IDENTIFYING AN INDIVIDUAL CONTRIBUTOR'S IDENTITY IS MEASURED; TO ADD A PENALTY FOR ACCEPTING CONTRIBUTIONS FROM CERTAIN NONLEGAL SOURCES; TO BAR PROSECUTION IF BEST EFFORTS ARE MADE TO ENSURE THAT A CONTRIBUTION IS FROM A LEGAL SOURCE; AND TO STRENGTHEN POLITICAL COMMITTEE TREASURER TRAINING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.14(b) reads as rewritten:

"(b) No entity shall ~~give, make,~~ and no candidate, committee or treasurer shall accept, any monetary contribution in excess of ~~one hundred fifty~~ dollars ~~(\$100.00)~~ (\$50.00) unless such contribution ~~be is~~ in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits, or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record."

SECTION 2. G.S. 163-278.20 is repealed.

SECTION 3. G.S. 163-278.19(b) reads as rewritten:

"(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, ~~except as provided in G.S. 163-278.20,~~ and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever."

SECTION 4. G.S. 163-278.8 reads as rewritten:**"§ 163-278.8. Detailed accounts to be kept by political treasurers.**

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

~~(d) A treasurer shall not be required to report the name of any individual who is a resident of this State who makes a total contribution of one hundred dollars (\$100.00) or less but he shall instead report the fact that he has received a total contribution of one hundred dollars (\$100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars (\$100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars (\$100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars (\$100.00), the treasurer may~~

~~report only those services or goods rendered or sold at a value that does not exceed one hundred dollars (\$100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.~~

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars (\$50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars (\$50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 5. G.S. 163-278.11 reads as rewritten:

"§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

- (1) Contributions. – Except as provided in subsection (a1) of this section, ~~A~~ a list of all contributions ~~required to be listed under G.S. 163-278.8~~ received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

- a. Job title or profession; and
- b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

- (2) Expenditures. – A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political

committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

- (3) Loans. – Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. – A treasurer shall not be required to report the name, address, or principal occupation of any individual resident of the State who contributes fifty dollars (\$50.00) or less to the treasurer's committee during an election as defined in G.S. 163-278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. – When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this ~~Article~~. Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include ~~the a~~ provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain".

SECTION 5.1. G.S. 163-278.9(g) reads as rewritten:

"(g) Any report filed under subsection (e) of this section must contain all the information required by ~~G.S. 163-278.8~~ or G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold."

SECTION 5.2. G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution ~~anonymously, except as provided in G.S. 163-278.8(d),~~ anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made ~~anonymously except as~~

~~provided in G.S. 163-278.8(d), anonymously.~~ If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina."

SECTION 6. G.S. 163-278.15 reads as rewritten:

"§ 163-278.15. No acceptance of contributions made by corporations, foreign and ~~domestic.~~domestic, or other prohibited sources.

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North ~~Carolina.~~Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

SECTION 7. G.S. 163-278.7 reads as rewritten:

"§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

- (1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. – When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.
- (2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;
- (3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;
- (4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;
- (5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;
- (5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

- (6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;
- (7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.
- (8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, candidate, political committee, or referendum committee ~~who and~~ shall be fully responsible for any act or acts committed by ~~an the assistant treasurer, treasurer, and the~~ The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and
- (9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) ~~The State Board of Elections shall provide training for every~~ Every treasurer of a political committee, ~~prior to the election in which the political committee is involved,~~ committee shall participate in training as to the duties of the ~~office.~~ office within three months of appointment and at least once every four years thereafter. The State Board of Elections shall provide ~~each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing the training as to the duties of the office,~~ office in person, through and shall conduct regional seminars for in-person training, seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in

which the political committee is involved. All such training shall be free of charge to the treasurer, treasurer and assistant treasurer."

SECTION 8. G.S. 163-278.9 is amended by adding a new subsection to read:

"(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f)."

SECTION 9. Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 2:00 p.m. on the 3rd day of August, 2006.

H.B. 1891

Session Law 2006-196

AN ACT TO CLARIFY AND SIMPLIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO MAKE TECHNICAL AND CLARIFYING TAX LAW CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts applicable to fire and lightning coverage, except marine and automobile contracts. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

<u>Type of Insurance Contract</u>	<u>Taxable Percentage</u>
<u>Fire Loss</u>	<u>100%</u>
<u>Commercial Multiple Peril</u>	
<u>Nonliability portion</u>	<u>100%</u>
<u>Liability portion</u>	<u>0%</u>
<u>Homeowners</u>	<u>50%</u>
<u>Farm Owners</u>	<u>30%."</u>

SECTION 2. G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4) are repealed.

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. Rate on Property Coverage Contracts. – An additional tax at the rate of one and thirty-three hundredths percent (1.33%) eighty-five hundredths percent (.85%) applies to gross premiums on insurance contracts applicable to fire and lightning coverage, except marine and automobile contracts for property coverage. The tax is imposed on ten percent (10%) a percentage of the gross premiums from the insurance contracts for automobile physical damage coverage contracts, determined in accordance with the table in this subdivision, and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty five percent (25%) (20%) of the net proceeds of this additional tax shall be deposited in must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty-five percent (25%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. The remaining net proceeds shall must be credited to the General Fund.

<u>Type of Insurance Contract</u>	<u>Taxable Percentage</u>
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	—0%
Homeowners	50%
Farm Owners	30%.

The following definitions apply in this subdivision:

- a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.
- b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery.
- c. NAIC. – National Association of Insurance Commissioners."

SECTION 4. G.S. 105-228.5(e) reads as rewritten:

"(e) Report and Payment. – Each taxpayer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The taxes imposed by this section shall be remitted to the Secretary with the report.

~~In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1."~~

SECTION 5. G.S. 105-228.5(f) reads as rewritten:

"(f) **Installment Payments Required.** – Taxpayers that are subject to the tax imposed by this section and have a premium tax liability, ~~not including the additional local fire and lightning tax, liability~~ of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article."

SECTION 6. G.S. 58-84-1 is repealed.**SECTION 7.** G.S. 58-84-25 reads as rewritten:**"§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

The Insurance Commissioner shall deduct the sum of three percent (3%) from the tax proceeds credited to the Department pursuant to ~~G.S. 105-228.5(d)(4)~~ G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the tax proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each fire district ~~in proportion to the amount of business done in the fire district~~ on a per capita basis, using the most recent annual population estimates certified by the State Budget Officer. These funds shall be held by the treasurer as a separate and distinct fund. The fire district shall immediately pay the funds to the treasurer of the local board of trustees upon the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each fire district, which board shall be composed of five members, residents of the fire district as hereinafter provided for, to be used by it for the purposes provided in G.S. 58-84-35."

SECTION 8. G.S. 58-87-1 reads as rewritten:**"§ 58-87-1. Volunteer Fire Department Fund.**

(a) **Fund.** – ~~There is created the~~ The Volunteer Fire Department Fund is created as an interest-bearing, nonreverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the Fund ~~shall be distributed under the direction of the Commissioner of Insurance.~~ Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.

(a1) Grant Program. – Beginning January 1, 1988, an ~~Beginning January 1, 1988, an~~ An eligible fire department may apply to the Commissioner of Insurance for a grant under this section. In awarding grants under this section, the Commissioner must, to the extent possible, select applicants from all parts of the State based upon need. Beginning May 1, 1988, and on each May 15, thereafter, the ~~The~~ Commissioner must award the grants on May 15 of each year shall make grants to eligible fire departments subject to the following limitations:

- (1) The size of a grant may not exceed twenty thousand dollars (\$20,000);
- (2) The applicant shall match the grant on a dollar-for-dollar basis;
- (3) The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection services; and
- (4) An applicant may receive no more than one grant per fiscal year.

~~In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.~~

~~No fire department may be declared ineligible for a grant under this section solely because it is classified as a municipal fire department.~~

(b) Eligible Fire Department. – A fire department is eligible for a grant under this section if it meets all of the following conditions: conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

- (1) It serves a response area of 6,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.
- (2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.
- (3) It has been certified by the Department of Insurance.

~~In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State Budget Officer.~~

(c) Report. – The Commissioner of Insurance shall ~~shall~~ must submit a written report to the General Assembly within 60 days after the grants have been made. This report ~~shall~~ must contain the amount of the grant and the name of the recipient."

SECTION 9. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is ~~any~~ any corporation ~~which~~ that receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting ~~stock~~ stock or voting capital interests."

SECTION 10. G.S. 105-130.7A(c) reads as rewritten:

"(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets ~~either~~ any of the following conditions:

- (1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted

by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

- (2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.
- (3) The taxpayer can establish that the related member to whom the amount was paid is organized under the laws of a country other than the United States, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the rate set in G.S. 105-130.3."

SECTION 11. G.S. 105-259(b)(5d) reads as rewritten:

"(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local ~~tax on prepared food and beverages~~: beverages tax or room occupancy tax:

- a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in ~~the a business of selling subject to a local prepared food and beverages~~: beverages tax or room occupancy tax.
- b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local ~~tax on prepared food and beverages~~: beverages tax or room occupancy tax."

SECTION 12. Section 24.9(b) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.9.(b)** This section becomes effective ~~January~~ July 1, 2007."

SECTION 13. The Revenue Laws Study Committee shall study the following issues:

- (1) The simplification of the additional tax imposed on insurance contracts on property coverage, as enacted in Section 3 of this act, and the distribution of the revenue generated by the tax. The study of this issue may include a recommendation on the percentage of revenue to be distributed to the firemen's local relief funds and the formula for making this distribution. The study may also consider the increasing difference between the amount of revenue available in the Volunteer Fire Department Fund for matching grants to purchase equipment and make capital improvements and the amount of grant requests received.
- (2) The authority of the Secretary of Revenue to require taxpayers to file consolidated returns. The study of this issue may include consideration of whether the State should require some corporations or all corporations to file a consolidated return.
- (3) The feasibility of replacing the State's current corporate income and franchise tax laws with a commercial activity tax based upon business gross receipts.
- (4) The administrative process for the review of disputed tax matters.

SECTION 14. Sections 1 and 10 of this act are effective for taxable years beginning on or after January 1, 2006. Sections 2, 3, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 2008. Sections 6, 7, and 8 of this act become effective January 1, 2008, and apply to proceeds credited to the Department of Insurance on or after that date. Section 9 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:01 p.m. on the 3rd day of August, 2006.

H.B. 1860

Session Law 2006-197

AN ACT TO DIRECT THE JUSTUS-WARREN HEART DISEASE AND STROKE PREVENTION TASK FORCE TO ESTABLISH AND APPOINT A STROKE ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-216.60 is amended by adding the following new subdivision to read:

"§ 143B-216.60. **The Justus-Warren Heart Disease and Stroke Prevention Task Force.**

...

(j) The Task Force has the following duties:

...

(10) Establish and maintain a Stroke Advisory Council, which shall advise the Task Force regarding the development of a statewide system of stroke care that shall include, among other items, a system for identifying and disseminating information about the location of primary stroke centers."

SECTION 2. The Justus-Warren Heart Disease and Stroke Prevention Task Force shall appoint the members of the Stroke Advisory Council as follows:

- (1) Four physicians, one upon the recommendation of the North Carolina Medical Society, one upon the recommendation of the North Carolina College of Emergency Physicians, one upon the recommendation of the Old North State Medical Society, and one who specializes in the treatment of strokes.
- (2) A hospital administrator recommended by the North Carolina Hospital Association.
- (3) A representative from the American Heart Association.
- (4) A representative from the North Carolina Association of Rescue and Emergency Medical Services.
- (5) A representative from the Area Health Education Centers (AHEC).
- (6) Other relevant experts as the Task Force deems beneficial to achieve the goals of the Stroke Advisory Council.

SECTION 3. Not later than February 15, 2007, the Justus-Warren Heart Disease and Stroke Prevention Task Force shall report 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 on the findings and recommendations of the Stroke Advisory Council regarding the development of a statewide system of stroke care.

SECTION 4. Notwithstanding any other provision of law to the contrary, the members of the Stroke Advisory Council shall, for the 2006-2007 fiscal year only, serve without compensation and without reimbursement for travel, food, and lodging.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:02 p.m. on the 3rd day of August, 2006.

H.B. 2037

Session Law 2006-198

AN ACT TO CLARIFY MEDICAID REIMBURSEMENTS FOR OCULAR PROSTHETISTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10.3(e)(24) of S.L. 2006-66 reads as rewritten:

"(24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or ~~certification~~certification, or in the case of ocular prosthetists Board certified, licensed, or accredited in accordance with the requirements established by the Department. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review."

SECTION 2. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:04 p.m. on the 3rd day of August, 2006.

S.B. 1375

Session Law 2006-199

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE NOTARY PUBLIC ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CORRECTIONS TO SESSION LAW 2006-59.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of ~~subsection (g)~~ subsection (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 2. G.S. 10B-68, as enacted in Section 24 of S.L. 2006-59, reads as rewritten:

"§ 10B-68. Technical defects cured.

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document. This subsection applies to notarial certificates made on or after December 1, 2005.

(b) Defects in the commissioning or recommissioning of a notary that are approved by the Department are cured. This subsection applies to commissions and recommissions issued on or after December 1, 2005.

(c) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in ~~G.S. 10B-20(b) and defects in the commissioning or recommissioning of the notary that were approved by the Department under this Chapter.~~ G.S. 10B-20(b). This subsection applies to notarial certificates made on or after December 1, 2005."

SECTION 3. G.S. 47-41.2, as enacted in Section 31 of S.L. 2006-59, reads as rewritten:

"§ 47-41.2. Technical defects.

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate. This subsection applies to notarial certificates and forms of probate made on or after December 1, 2005.

(b) This section does not apply to the requirements for registration contained in G.S. 47-14(a) and a register of deeds shall not accept for registration an instrument that does not comply with the requirements of G.S. 47-14(a)."

SECTION 4. Section 33 of S.L. 2006-59 reads as rewritten:

"SECTION 33. G.S. 10B-11(b)(3) as amended in Section 5 of this act becomes effective July 1, 2006. G.S. 10B-99, as enacted in Section 24 of this act, is effective when this act becomes law. The remainder of this act becomes effective October 1, 2006, and except as otherwise set forth in this act, applies to notarial acts performed on or after that date."

SECTION 5. G.S. 10B-68(a) and (b), as enacted in Section 24 of S.L. 2006-59, and as amended in Section 2 of this act, become effective July 1, 2006. G.S. 47-41.2, as enacted in Section 31 of S.L. 2006-59, and as amended in Section 3 of this act, becomes effective July 1, 2006. Section 1 of this act becomes effective October 1, 2006. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:05 p.m. on the 3rd day of August, 2006.

S.B. 1584

Session Law 2006-200

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO COVER INCREASED

PROGRAM OPERATING COSTS AND THE COSTS OF ANY LEGISLATIVE SALARY INCREASE FOR PERSONNEL WHO ADMINISTER THE PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to one hundred thirty-seven thousand one hundred and six dollars (\$137,106) for the 2006-2007 fiscal year as needed to cover increased program operating costs and the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes.

SECTION 1.(b) There is appropriated from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources up to one hundred thirty-seven thousand one hundred and six dollars (\$137,106) for the 2006-2007 fiscal year as needed to cover increased program operating costs and the cost of any legislative salary increase for personnel who administer the underground storage tank program under Parts 2A and 2B of Article 21A of Chapter 143 of the General Statutes.

SECTION 1.(c) It is the intent of the General Assembly that funds appropriated under this section are recurring funds and that these funds are in addition to funds appropriated under subsections (b) and (d) of Section 11.4 of S. L. 2003-284 and subsection (b) of Section 30.10 of S.L. 2004-124.

SECTION 2. This act becomes effective 1 July 2006.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:06 p.m. on the 3rd day of August, 2006.

H.B. 1843

Session Law 2006-201

AN ACT TO ESTABLISH THE STATE GOVERNMENT ETHICS ACT; TO CREATE THE STATE ETHICS COMMISSION; TO ESTABLISH ETHICAL STANDARDS FOR CERTAIN STATE PUBLIC OFFICERS, STATE EMPLOYEES, AND APPOINTEES TO NONADVISORY STATE BOARDS AND COMMISSIONS; TO REQUIRE PUBLIC DISCLOSURE OF ECONOMIC INTERESTS BY CERTAIN PERSONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES; TO AMEND THE LOBBYING LAWS; AND TO MAKE CONFORMING CHANGES.

Whereas, the people of North Carolina entrust public power to elected and appointed officials for the purpose of furthering the public, not private or personal, interest; and

Whereas, to maintain the public trust, it is essential that government function honestly and fairly, free from all forms of impropriety, threats, favoritism, and undue influence; and

Whereas, elected and appointed officials must maintain and exercise the highest standards of duty to the public in carrying out the responsibilities and functions of their positions; and

Whereas, acceptance of authority granted by the people to elected and appointed officials imposes a commitment of fidelity to the public interest, and the power so entrusted should not be used to advance narrow interests for oneself or others; and

Whereas, self-interest, partiality, and prejudice have no place in decision making for the public good; and

Whereas, public officials must exercise their duties responsibly with skillful judgment and energetic dedication; and

Whereas, public officials must exercise discretion with sensitive information pertaining to public and private persons and activities; and

Whereas, to maintain the integrity of North Carolina's State government, those citizens entrusted with authority must exercise it for the good of the public and treat every citizen with courtesy, attentiveness, and respect; and

Whereas, because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflicts will occur. Often these conflicts are unintentional and slight, but at every turn those public officials who represent the people of this State must ensure that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from decisions, votes, or processes where a conflict of interest exists; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. ENACT THE STATE GOVERNMENT ETHICS ACT.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 138A.
"State Government Ethics Act.
"Article 1.
"General Provisions.

"§ 138A-1. Title.

This Chapter shall be known and may be cited as the 'State Government Ethics Act'.

"§ 138A-2. Purpose.

The purpose of this Chapter is to ensure that elected and appointed State agency officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. To this end, it is the intent of the General Assembly in this Chapter to ensure that standards of ethical conduct and standards regarding conflicts of interest are clearly established for elected and appointed State agency officials, that the State continually educates these officials on matters of ethical conduct and conflicts of interest, that potential and actual conflicts of interests are identified and resolved, and that violations of standards of ethical conduct and conflicts of interest are investigated and properly addressed.

"§ 138A-3. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – Any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, as determined and designated by the Commission, except for those public bodies that have only advisory authority.

- (2) Business. – Any of the following organized for profit:
- a. Association.
 - b. Business trust.
 - c. Corporation.
 - d. Enterprise.
 - e. Joint venture.
 - f. Organization.
 - g. Partnership.
 - h. Proprietorship.
 - i. Vested trust.
 - j. Every other business interest, including ownership or use of land for income.
- (3) Business with which associated. – A business in which the person or any member of the person's immediate family does any of the following:
- a. Is an employee.
 - b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of the interest owned.
 - c. Owns a legal, equitable, or beneficial interest of ten thousand dollars (\$10,000) or more in the business or five percent (5%) of the business, whichever is less, other than as a trustee on a deed of trust.
- For purposes of this subdivision, the term 'business' shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:
- a. The person or a member of the person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund.
 - b. The fund is publicly traded, or the fund's assets are widely diversified.
- (4) Commission. – The State Ethics Commission.
- (5) Committee. – The Legislative Ethics Committee as created in Part 3 of Article 14 of Chapter 120 of the General Statutes.
- (6) Compensation. – Any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by that person or another. This term does not include campaign contributions properly received and, reported as required by Article 22A of Chapter 163 of the General Statutes.
- (7) Confidential information. – Information defined as confidential by the law.
- (8) Constitutional officers of the State. – Officers whose offices are established by Article III of the North Carolina Constitution.
- (9) Contract. – Any agreement, including sales and conveyances of real and personal property, and agreements for the performance of services.
- (10) Covered person. – A legislator, public servant, or judicial officer, as identified by the Commission under G.S. 138A-11.

- (11) Economic interest. – Matters involving a business with which associated or a nonprofit corporation or organization with which associated.
- (12) Employing entity. – For public servants, any of the following bodies of State government of which the public servant is an employee or a member, or over which the public servant exercises supervision: agencies, authorities, boards, commissions, committees, councils, departments, offices, institutions and their subdivisions, and constitutional offices of the State. For legislators, it is the house of which the legislator is a member. For legislative employees, it is the authority that hired the individual. For judicial employees, it is the Chief Justice.
- (13) Extended family. – Spouse, lineal descendant, lineal ascendant, sibling, spouse's lineal ascendant, spouse's lineal descendant, spouse's sibling, and the spouse of any of these persons.
- (14) Filing person. – A person required to file a statement of economic interest under G. S. 138A-22.
- (15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:
 - a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.
 - b. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying.
 - c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.
 - d. Academic or athletic scholarships based on the same criteria as applied to the public.
 - e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
- (16) Honorarium. – Payment for services for which fees are not legally or traditionally required.
- (17) Immediate family. – An unemancipated child of the covered person residing in the household and the covered person's spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household.
- (18) Judicial employee. – The director and assistant director of the Administrative Office of the Courts and any other person, designated by the Chief Justice, employed in the Judicial Department whose annual compensation from the State is sixty thousand dollars (\$60,000) or more.

- (19) Judicial officer. – Justice or judge of the General Court of Justice, district attorney, clerk of court, or any person elected or appointed to any of these positions prior to taking office.
- (20) Legislative action. – As the term is defined in G.S. 120C-100.
- (21) Legislative employee. – As the term is defined in G.S. 120C-100.
- (22) Legislator. – A member or presiding officer of the General Assembly, or a person elected or appointed a member or presiding officer of the General Assembly before taking office.
- (23) Lobbying. – As the term is defined in G.S. 120C-100.
- (24) Nonprofit corporation or organization with which associated. – Any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year.
- (25) Official action. – Any decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making.
- (26) Participate. – To take part in, influence, or attempt to influence, including acting through an agent or proxy.
- (27) Person. – Any individual, firm, partnership, committee, association, corporation, business, or any other organization or group of persons acting together.
- (28) Political party. – Either of the two largest political parties in the State based on statewide voter registration at the applicable time.
- (29) Public event. – Any of the following:
 - a. For legislators and legislative employees:
 - 1. An organized gathering of persons open to the general public to which all legislators or legislative employees are invited to attend.
 - 2. An organized gathering of a person to which a legislator or legislative employee is invited along with the entire membership of the House of Representatives, Senate, a committee, a standing subcommittee, a county legislative delegation, a municipal legislative delegation, a joint committee, a joint commission, or a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, and one of the following apply:
 - I. At least 10 individuals associated with the person actually attend, other than the legislator or legislative employee, or the immediate family of the legislator or legislative employee.
 - II. All shareholders, employees, board members, officers, members, or subscribers of the person

located in North Carolina are notified and invited to attend.

III. The person is a governmental body and the gathering is subject to the open meetings law.

b. For public servants:

1. An organized gathering of individuals open to the general public to which at least 10 public servants are invited to attend.
2. An organized gathering of a governmental body, the gathering of which is subject to the open meetings law, and to which at least 10 public servants are invited to attend.
3. An organized gathering of a person to which at least 10 public servants are invited to attend and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person who are located in a specific North Carolina office or county are notified and invited to attend.

(30) Public servants. – All of the following:

- a. Constitutional officers of the State and persons elected or appointed as constitutional officers of the State prior to taking office.
- b. Employees of the Office of the Governor.
- c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
- d. The chief deputy and chief administrative assistant of each person designated under sub-subdivision a. or c. of this subdivision.
- e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to persons designated under sub-subdivision a., c., or d. of this subdivision.
- f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
- g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
- h. Judicial employees.
- i. All voting members of boards, including ex officio members and members serving by executive, legislative, or judicial branch appointment.
- j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.

- k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
 - l. Members of the Commission.
 - m. Persons under contract with the State working in or against a position included under this subdivision.
- (31) Vested trust. – A trust, annuity, or other funds held by a trustee or other third party for the benefit of the covered person or a member of the covered person's immediate family. A vested trust shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if:
- a. The covered person or a member of the covered person's immediate family neither exercises nor has the ability to exercise control over the financial interests held by the fund; and
 - b. The fund is publicly traded, or the fund's assets are widely diversified.

"§ 138A-4. Application to Lieutenant Governor.

For purposes of this Chapter, the Lieutenant Governor shall be considered a legislator when carrying out the Lieutenant Governor's duties under Sec. 13 of Article II of the Constitution, and a public servant for all other purposes.

"§ 138A-5: [Reserved]

"Article 2.

"State Ethics Commission.

"§ 138A-6. State Ethics Commission established.

There is established the State Ethics Commission.

"§ 138A-7. Membership.

(a) The Commission shall consist of eight members. Four members shall be appointed by the Governor, of whom no more than two shall be of the same political party. Four members shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, neither of whom shall be of the same political party, and two upon the recommendation of the President Pro Tempore of the Senate, neither of whom shall be of the same political party. Members shall serve for four-year terms, beginning January 1, 2007, except for the initial terms that shall be as follows:

- (1) Two members appointed by the Governor shall serve an initial term of one year.
- (2) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of two years.
- (3) Two members appointed by the Governor shall serve initial terms of three years.
- (4) Two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives and

one member upon the recommendation of the President Pro Tempore of the Senate, shall serve initial terms of four years.

(b) Members shall be removed from the Commission only for misfeasance, malfeasance, or nonfeasance. Members appointed by the Governor may be removed by the Governor. Members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be removed by the Governor upon the recommendation of the Speaker. Members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be removed by the Governor upon the recommendation of the President Pro Tempore.

(c) Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of any unfulfilled term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122 for the remainder of any unfulfilled term.

(d) No member while serving on the Commission or employee while employed by the Commission shall:

- (1) Hold or be a candidate for any other office or place of trust or profit under the United States, the State, or a political subdivision of the State.
- (2) Hold office in any political party above the precinct level.
- (3) Participate in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority.
- (4) Otherwise be an employee of the State, a community college, or a local school system, or serve as a member of any other State board.

(e) The Governor shall annually appoint a member of the Commission to serve as chair of the Commission. The Commission shall elect a vice-chair annually from its membership. The vice-chair shall act as the chair in the chair's absence or if there is a vacancy in that position.

(f) Members of the Commission shall receive no compensation for service on the Commission but shall be reimbursed for subsistence, travel, and convention registration fees as provided under G.S. 138-5 or 138-7, as applicable.

"§ 138A-8. Meetings and quorum.

The Commission shall meet at least quarterly and at other times as called by its chair or by four of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Five members of the Commission constitute a quorum.

"§ 138A-9. Staff and offices.

The Commission may employ professional and clerical staff, including an executive director. The Commission shall be located within the Department of Administration for administrative purposes only, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Administration, and is subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.

"§ 138A-10. Powers and duties.

(a) In addition to other powers and duties specified in this Chapter, the Commission shall:

- (1) Provide reasonable assistance to covered persons in complying with this Chapter.

- (2) Develop readily understandable forms, policies, and procedures to accomplish the purposes of the Chapter.
 - (3) Identify and publish the following:
 - a. A list of nonadvisory boards.
 - b. The names of persons subject to this Chapter as covered persons and legislative employees under G.S. 138A-11.
 - (4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest.
 - (5) Conduct inquiries of alleged violations against judicial officers, legislators, and legislative employees in accordance with G.S. 138A-12.
 - (6) Conduct inquiries into alleged violations against public servants in accordance with G.S. 138A-12.
 - (7) Render advisory opinions in accordance with G.S. 138A-13 and G.S. 120C-102.
 - (8) Initiate and maintain oversight of ethics educational programs for public servants and their staffs, and legislators and legislative employees, consistent with G.S. 138A-14.
 - (9) Conduct a continuing study of governmental ethics in the State and propose changes to the General Assembly in the government process and the law as are conducive to promoting and continuing high ethical behavior by governmental officers and employees.
 - (10) Adopt procedures and guidelines to implement this Chapter.
 - (11) Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.
 - (12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number of complaints pending action by the Commission.
 - (13) Perform other duties as may be necessary to accomplish the purposes of this Chapter.
- (b) The Commission may authorize the Executive Director and other staff of the Commission to evaluate statements of economic interest on behalf of the Commission as authorized under subdivision (a)(4) of this section.

"§ 138A-11. Identify and publish names of covered persons and legislative employees.

The Commission shall identify and publish at least quarterly a listing of the names and positions of all persons subject to this Chapter as covered persons or legislative employees. The Commission shall also identify and publish at least annually a listing of all boards to which this Chapter applies. This listing may be published electronically on a public Internet Web site maintained by the Commission.

"§ 138A-12. Inquiries by the Commission.

(a) Jurisdiction. – The Commission may receive complaints alleging unethical conduct by covered persons and legislative employees and shall conduct inquiries of complaints alleging unethical conduct by covered persons and legislative employees, as set forth in this section.

(b) Institution of Proceedings. – On its own motion, in response to a signed and sworn complaint of any individual filed with the Commission, or upon the written request of any public servant or any person responsible for the hiring, appointing, or supervising of a public servant, the Commission shall conduct an inquiry into any of the following:

- (1) The application or alleged violation of this Chapter.
- (2) For legislators, the application of alleged violations of Part 1 of Article 14 of Chapter 120 of the General Statutes.
- (3) An alleged violation of the criminal law by a covered person in the performance of that individual's official duties.
- (4) An alleged violation of G.S. 126-14.

Allegations of violations of the Code of Judicial Conduct shall be referred to the Judicial Standards Commission without investigation.

(c) Complaint. –

- (1) A sworn complaint filed under this Chapter shall state the name, address, and telephone number of the person filing the complaint, the name and job title or appointive position of the person against whom the complaint is filed, and a concise statement of the nature of the complaint and specific facts indicating that a violation of this Chapter or Chapter 120 of the General Statutes has occurred, the date the alleged violation occurred, and either (i) that the contents of the complaint are within the knowledge of the individual verifying the complaint, or (ii) the basis upon which the individual verifying the complaint believes the allegations to be true.
- (2) Except as provided in subsection (d) of this section, a complaint filed under this Chapter must be filed within two years of the date the complainant knew or should have known of the conduct upon which the complaint is based.
- (3) The Commission may decline to accept, refer, or conduct an inquiry into any complaint that does not meet all of the requirements set forth in subdivision (1) of this subsection, or the Commission may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.
- (4) In addition to subdivision (3) of this subsection, the Commission may decline to accept, refer, or conduct an inquiry into a complaint if it determines that any of the following apply:

- a. The complaint is frivolous or brought in bad faith.
- b. The individuals and conduct complained of have already been the subject of a prior complaint.
- c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Commission may stay its complaint inquiry pending final resolution of the other investigation.

(5) The Commission shall send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and the employing entity, within 30 days of the filing.

(d) Conduct of Inquiry of Complaints by the Commission. – The Commission shall conduct an inquiry into all complaints properly before the Commission in a timely manner. The Commission shall initiate an inquiry into a complaint within 60 days of the filing of the complaint. The Commission is authorized to initiate inquiries upon request of any member of the Commission if there is reason to believe that a covered person or legislative employee has or may have violated this Chapter. Commission-initiated complaint inquiries under this section shall be initiated within two years of the date the Commission knew of the conduct upon which the complaint is based, except when the conduct is material to the continuing conduct of the duties in office. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Commission may take general notice of available information even if not formally provided to the Commission in the form of a complaint. The Commission may utilize the services of a hired investigator when conducting inquiries.

(e) Covered Person and Legislative Employees Cooperation With Inquiry. – Covered persons and legislative employees shall promptly and fully cooperate with the Commission in any Commission-related inquiry. Failure to cooperate fully with the Commission in any inquiry shall be grounds for sanctions as set forth in G.S. 138A-45.

(f) Dismissal of Complaint After Preliminary Inquiry. – If the Commission determines at the end of its preliminary inquiry that (i) the individual who is the subject of the complaint is not a covered person or legislative employee subject to the Commission's jurisdiction and authority under this Chapter, or (ii) the complaint does not allege facts sufficient to constitute a violation of this Chapter, the Commission shall dismiss the complaint.

(g) Commission Inquiries. – If at the end of its preliminary inquiry, the Commission determines to proceed with further inquiry into the conduct of a covered person or legislative employee, the Commission shall provide written notice to the individual who filed the complaint and the covered person or legislative employee as to the fact of the inquiry and the charges against the covered person or legislative employee. The covered person or legislative employee shall be given an opportunity to file a written response with the Commission.

(h) Action on Inquiries. – The Commission shall conduct inquiries into complaints to the extent necessary to either dismiss the complaint for lack of probable cause of a violation under this section, or:

- (1) For public servants, decide to proceed with a hearing under subsection (i) of this section.

- (2) For legislators, except the Lieutenant Governor, refer the complaint to the Committee.
- (3) For judicial officers, refer the complaint to the Judicial Standards Commission for complaints against justices and judges, to the senior resident superior court judge of the district or county for complaints against district attorneys, or to the chief district court judge for the district or county for complaints against clerks of court.
- (4) For legislative employees, refer the complaint to the employing entity.
- (i) Hearing. –
 - (1) The Commission shall give full and fair consideration to all complaints received against a public servant. If the Commission determines that the complaint cannot be resolved without a hearing, or if the public servant requests a hearing, a hearing shall be held.
 - (2) The Commission shall send a notice of the hearing to the complainant, and the public servant. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
 - (3) The Commission shall make available to the public servant prior to a hearing all relevant information collected by the Commission in connection with its investigation of a complaint.
 - (4) At any hearing held by the Commission:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. The hearing shall be held in closed session unless the public servant requests that the hearing be held in open session. In any event, the deliberations by the Commission on a complaint may be held in closed session.
 - c. The public servant being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.
- (j) Settlement of Inquiries. – The public servant who is the subject of the complaint and the staff of the Commission may meet by mutual consent before the hearing to discuss the possibility of settlement of the inquiry or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the inquiry is subject to the approval of the Commission.
- (k) Disposition of Inquiries. – After hearing, the Commission shall dispose of the matter in one or more of the following ways:
 - (1) If the Commission finds substantial evidence of an alleged violation of a criminal statute, the Commission shall refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution.
 - (2) If the Commission finds that the alleged violation is not established by clear and convincing evidence, the Commission shall dismiss the complaint.
 - (3) If the Commission finds that the alleged violation of this Chapter is established by clear and convincing evidence, the Commission shall do one or more of the following:
 - a. Issue a private admonishment to the public servant and notify the employing entity, if applicable. Such notification shall be treated as part of the personnel record of the public servant.

- b. Refer the matter for appropriate action to the Governor and the employing entity that appointed or employed the public servant or of which the public servant is a member.
- c. Refer the matter for appropriate action to the Chief Justice for judicial employees.
- d. Refer the matter to the Principal Clerks of the House of Representatives and Senate of the General Assembly for constitutional officers of the State.
- e. Refer the matter for appropriate action to the principal clerk of the house of the General Assembly that elected the public servant for members of the Board of Governors.

(l) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the person against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court.

(m) Reports and Records. – The Commission shall render the results of its inquiry in writing. When a matter is referred under subdivision (h)(2) and (3), or subsection (k) of this section, the Commission's report shall consist of the complaint, response, and detailed results of its inquiry in support of the Commission's finding of a violation under this Chapter.

(n) Confidentiality. – Complaints and responses filed with the Commission and reports and other investigative documents and records of the Commission connected to an inquiry under this section shall be confidential and not matters of public record, except when the covered person or legislative employee under inquiry requests in writing that the records and findings be made public prior to the time the employing entity imposes public sanctions. At such time as public sanctions are imposed on a covered person, the complaint, response, and Commission's report to the employing entity shall be made public.

(o) Recommendations of Sanctions. – After referring a matter under subsection (k) of this section, if requested by the entity to which the matter was referred, the Commission may recommend sanctions or issue rulings as it deems necessary or appropriate to protect the public interest and ensure compliance with this Chapter. In recommending appropriate sanctions, the Commission may consider the following factors:

- (1) The public servant's prior experience in an agency or on a board and prior opportunities to learn the ethical standards for a public servant as set forth in Article 4 of this Chapter, including those dealing with conflicts of interest.
- (2) The number of ethics violations.
- (3) The severity of the ethics violations.
- (4) Whether the ethics violations involve the public servant's financial interests or arise from an appearance of conflict of interest.
- (5) Whether the ethics violations were inadvertent or intentional.

- (6) Whether the public servant knew or should have known that the improper conduct was a violation of this Chapter.
- (7) Whether the public servant has previously been advised or warned by the Commission.
- (8) Whether the conduct or situation giving rise to the ethics violation was pointed out to the public servant in the Commission's Statement of Economic Interest evaluation letter issued under G.S. 138A-24(e).
- (9) The public servant's motivation or reason for the improper conduct or action, including whether the action was for personal financial gain versus protection of the public interest.

In making recommendations under this subsection, if the Commission determines, after proper review and investigation, that sanctions are appropriate, the Commission may recommend any action it deems necessary to properly address and rectify any violation of this Chapter by a public servant, including removal of the public servant from the public servant's State position. Nothing in this subsection is intended, and shall not be construed, to give the Commission any independent civil, criminal, or administrative investigative or enforcement authority over covered persons, or other State employees or appointees.

(p) Authority of Employing Entity. – Any action or failure to act by the Commission under this Chapter, except G.S. 138A-13, shall not limit any authority of any of the applicable employing entities to discipline the covered person or legislative employee.

(q) Continuing Jurisdiction. – The Commission shall have continuing jurisdiction to investigate possible criminal violations of this Chapter for a period of one year following the date a person, who was formerly a public servant or legislative employee, ceases to be a public servant or legislative employee for any investigation that commenced prior to the date the public servant or legislative employee ceases to be a public servant or legislative employee.

(r) Subpoena Authority. – The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of alleged violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines the subpoenas are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any person covered by this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(s) Reports. – The number of complaints referred under this section shall be reported under G.S. 138A-10(a)(12).

(t) Concurrent Jurisdiction. – Nothing in this section shall limit the jurisdiction of the Committee or the Judicial Standards Commission with regards to legislative or judicial misconduct, and jurisdiction under this section shall be concurrent with the jurisdiction of the Committee and the Judicial Standards Commission.

"§ 138A-13. Advisory opinions.

(a) At the request of any public servant or legislative employee, any individual who is responsible for the supervision or appointment of a person who is a public servant or legislative employee, legal counsel for any public servant, any ethics liaison under G.S. 138A-14, or any member of the Commission, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and the public servant's or legislative employee's compliance therewith. The

request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. On its own motion, the Commission may render advisory opinions on specific questions involving the meaning and application of this Chapter. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the public servant or legislative employee, on that matter, from both of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.

(b) At the request of a legislator, the Commission shall render recommended advisory opinions on specific questions involving the meaning and application of this Chapter and Part 1 of Article 14 of Chapter 120 of the General Statutes, and the legislator's compliance therewith. The request shall be in writing, electronic or otherwise, and relate prospectively to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, reliance upon a requested written advisory opinion on a specific matter shall immunize the legislator, on that matter, from both of the following:

- (1) Investigation by the Committee or Commission.
- (2) Any adverse action by the house of which the legislator is a member.

Any advisory opinion issued to a legislator under this subsection shall immediately be delivered to the chairs of the Committee. Except for the Lieutenant Governor, the immunity granted under this subsection shall not apply after the time the Committee modifies or overturns the advisory opinion of the Commission in accordance with G.S. 120-104.

(c) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(d) The Commission shall publish its advisory opinions at least once a year. These advisory opinions shall be edited for publication purposes as necessary to protect the identities of the individuals requesting opinions.

(e) Except as provided under subsection (d) of this section, requests for advisory opinions, and advisory opinions issued under this section, are confidential and not public records.

(f) This section shall not apply to judicial officers.

"§ 138A-14. Ethics education program.

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest or appearances of conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant and the immediate staff of every public servant shall participate in an ethics presentation approved by the Commission within six months of the person's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator and legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of the person's election, reelection, appointment, or employment in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

(f) The Commission shall publish a newsletter containing summaries of the Commission's opinions, policies, procedures, and interpretive bulletins as issued from time to time. The newsletter shall be distributed to all covered persons and legislative employees. Publication under this subsection may be done electronically.

(g) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth ethical standards applicable to covered persons. This collection shall be made available electronically as resource material to public servants, and ethics liaisons, upon request.

(h) As used in this section, "immediate staff" means those individuals who report directly to the public servant.

(i) This section shall not apply to judicial officers.

"§ 138A-15. Duties of heads of State agencies.

(a) The head of each State agency, including the chair of each board subject to this Chapter, shall take an active role in furthering ethics in public service and ensuring compliance with this Chapter. The head of each State agency and the chair of each board shall make a conscientious, good-faith effort to assist public servants within the agency or on the board in monitoring their personal, financial, and professional affairs to avoid taking any action that results in a conflict of interest or the appearance of a conflict.

(b) The head of each State agency, including the chair of each board subject to this Chapter, shall maintain familiarity with and stay knowledgeable of the reports, opinions, newsletters, and other communications from the Commission regarding ethics in general and the interpretation and enforcement of this Chapter. The head of each State agency and the chair of each board shall also maintain familiarity with and stay knowledgeable of the Commission's reports, evaluations, opinions, or findings regarding individual public servants in that person's agency or on that person's board, or under that person's supervision or control, including all reports, evaluations, opinions, or findings pertaining to actual or potential conflicts of interest.

(c) When an actual or potential conflict of interest is cited by the Commission under G.S. 138A-24(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board and duly brought to the attention of the membership by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with this Chapter.

(d) The head of each State agency, including the chair of each board subject to this Chapter, shall periodically remind public servants under that person's authority of the public servant's duties to the public under the ethical standards and rules of conduct in this Chapter, including the duty of each public servant to continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest or appearances of conflict.

(e) At the beginning of any meeting of a board, the chair shall remind all members of their duty to avoid conflicts of interest and appearances of conflict under this Chapter. The chair also shall inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time.

(f) The head of each State agency, including the chair of each board subject to this Chapter, shall ensure that legal counsel employed by or assigned to their agency or board are familiar with the provisions of this Chapter, including the Ethical Standards for Covered Persons set forth in Article 4 of this Chapter, and are available to advise public servants on the ethical considerations involved in carrying out their public duties in the best interest of the public. Legal counsel so engaged may consult with the Commission, seek the Commission's assistance or advice, and refer public servants and others to the Commission as appropriate.

(g) Taking into consideration the individual autonomy, needs, and circumstances of each agency and board, the head of each State agency, including the chair of each board subject to this Chapter, shall consider the need for the development and implementation of in-house educational programs, procedures, or policies tailored to meet the agency's or board's particular needs for ethics education, conflict identification, and conflict avoidance. This includes the periodic presentation to all agency heads, their chief deputies or assistants, other public servants under their supervision or control, and members of boards, of the basic ethics education and awareness presentation outlined in G.S. 138A-14 and any other workshop or seminar program the agency head or board chair deems necessary in implementing this Chapter. Agency heads and board chairs may request reasonable assistance from the Commission in complying with the requirements of this subsection.

(h) As soon as reasonably practicable after the designation, hiring, or promotion of their chief deputies, assistants, or other public servants under their supervision or control, or learning of the appointment or election of other public servants to a board covered under this Chapter, all agency heads and board chairs shall (i) notify the Commission of such designation, hiring, promotion, appointment, or election and (ii) provide these public servants with copies of this Chapter and all applicable financial disclosure forms, if these materials and forms have not been previously provided to these public servants in connection with their designation, hiring, promotion, appointment, or election. In order to avoid duplication of effort, agency heads and board chairs shall coordinate this effort with the Commission's staff.

"§§ 138A-16 through 20: [Reserved]"

"Article 3.

"Public Disclosure of Economic Interests.

"§ 138A-21. Purpose.

The purpose of disclosure of the financial and personal interests by covered persons is to assist covered persons and those persons who appoint, elect, hire, supervise, or advise them identify and avoid conflicts of interest and potential conflicts of interest between the covered person's private interests and the covered person's public duties. It

is critical to this process that current and prospective covered persons examine, evaluate, and disclose those personal and financial interests that could be or cause a conflict of interest or potential conflict of interest between the covered person's private interests and the covered person's public duties. Covered persons must take an active, thorough, and conscientious role in the disclosure and review process, including having a complete knowledge of how the covered person's public position or duties might impact the covered person's private interests. Covered persons have an affirmative duty to provide any and all information that a reasonable person would conclude is necessary to carry out the purposes of this Chapter and to fully disclose any conflict of interest or potential conflict of interest between the covered person's public and private interests, but the disclosure, review, and evaluation process is not intended to result in the disclosure of unnecessary or irrelevant personal information.

"§ 138A-22. Statement of economic interest; filing required.

(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars (\$60,000), shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than March 15th of every year thereafter, except as otherwise filed under subsection (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection.

(b) Notwithstanding subsection (a) of this section, persons hired by, and appointees of, constitutional officers of the State may file a statement of economic interest within 30 days after their appointments or employment when the appointment or employment is made during the first 60 days of the constitutional officer's initial term in that constitutional office.

(c) Notwithstanding subsection (a) of this section, public servants, under G.S. 138A-3(30)j. and k., who have submitted a statement of economic interest under subsection (a) of this section, may be hired, appointed, or elected provisionally prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article, subject to dismissal or removal based on the Commission's evaluation.

(d) A candidate for an office subject to this Article shall file the statement of economic interest at the same place and in the same manner as the notice of candidacy for that office is required to be filed under G.S. 163-106, within 10 days of the filing deadline for the office the candidate seeks. A person who is nominated under G.S. 163-114 after the primary and before the general election, and a person who qualifies under G.S. 163-122 as an unaffiliated candidate in a general election, shall file a statement of economic interest with the county board of elections of each county in the senatorial or representative district. A person nominated under G.S. 163-114 shall file the statement within three days following the person's nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to

qualify as an unaffiliated candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed under that section. A person seeking to have write-in votes counted for the person in a general election shall file a statement of economic interest at the same time the candidate files a declaration of intent under G.S. 163-123. A candidate of a new party chosen by convention shall file a statement of economic interest at the same time that the president of the convention certifies the names of its candidates to the State Board of Elections under G.S. 163-98.

(e) The State Board of Elections shall provide for notification of the statement of economic interest requirements of this Article to be given to any candidate filing for nomination or election to those offices subject to this Article at the time of the filing of candidacy.

(f) Within 10 days of the filing deadline for office of a covered person, the executive director of the State Board of Elections shall send to the State Ethics Commission a list of the names and addresses of each candidate who have filed as a candidate for office as a covered person. A county board of election shall forward any statements of economic interest filed with the board under this section to the State Board of Elections. The executive director of the State Board of Elections shall forward a certified copy of the statements of economic interest to the Commission for evaluation upon its filing with the State Board of Elections under this section.

(g) The Commission shall issue forms to be used for the statement of economic interest and shall revise the forms from time to time as necessary to carry out the purposes of this Chapter. Except as otherwise set forth in this section and in G.S. 138A-15(h), upon notification by the employing entity, the Commission shall furnish to all other covered persons the appropriate forms needed to comply with this Article.

"§ 138A-23. Statements of economic interest as public records.

The statements of economic interest filed by prospective public servants under this Article for appointed or employed positions and written evaluations by the Commission of these statements are not public records until the prospective public servant is appointed or employed by the State. All other statements of economic interest and all other written evaluations by the Commission of those statements are public records.

"§ 138A-24. Contents of statement.

(a) Any statement of economic interest filed under this Article shall be on a form prescribed by the Commission and sworn to by the filing person. Answers must be provided to all questions. The form shall include the following information about the filing person and the filing person's immediate family:

- (1) The name, home address, occupation, employer, and business of the person.
- (2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars (\$10,000) owned by the filing person and the filing person's immediate family. This list shall include the following:
 - a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.
 - b. Real estate that is currently leased or rented to or from the State.

- c. Personal property sold to or bought from the State within the preceding two years.
 - d. Personal property currently leased or rented to or from the State.
 - e. The name of each publicly owned company.
 - f. The name of each nonpublicly owned company or business entity, including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.
 - g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars (\$10,000).
 - h. A list of all nonpublicly owned businesses of which the person is an officer, employee, director, partner, owner, or member or manager of a limited liability company.
 - i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.
 - j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.
 - k. A list of all liabilities, excluding indebtedness on the filing person's personal residence, by type of creditor and debtor.
 - l. A list of any public or private enterprise, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the person or any member of the person's immediate family is a director, officer, governing board member, employee, or independent contractor as of December 31 of the preceding year, including a list of which of those nonprofit corporations or organizations do business with the State or receive State funds, if known, and a brief description of the nature of the business, or which with due diligence could reasonably be known.
- (3) A list of each source (not specific amounts) of income of more than five thousand dollars (\$5,000) received during the previous year by business or industry type, including salary or wages, professional fees, honoraria, interest, dividends, capital gains, and business income.
- (4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten

thousand dollars (\$10,000) from any of the following categories of legal representation:

- a. Administrative law.
 - b. Admiralty law.
 - c. Corporate law.
 - d. Criminal law.
 - e. Decedents' estates law.
 - f. Environmental law.
 - g. Insurance law.
 - h. Labor law.
 - i. Local government law.
 - j. Negligence or other tort litigation law.
 - k. Real property law.
 - l. Securities law.
 - m. Taxation law.
 - n. Utilities regulation law.
- (5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars (\$10,000).
 - (6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator or a judicial officer.
 - (7) A list of the public servant's or the public servant's immediate family's memberships or other affiliations with, including offices held in, societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction. This subdivision does not apply to a legislator, a judicial officer, or that person's immediate family.
 - (8) A list of all things of monetary value greater than two hundred dollars (\$200.00) given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, or from the person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.
 - (9) A list of any felony convictions of the filing person.

(10) Any other information that is necessary either to carry out the purposes of this Chapter or to fully disclose any conflict of interest or potential conflict of interest. If the filing person believes a potential for conflict exists, the filing person has a duty to inquire of the Commission as to that potential conflict. If a filing person is uncertain of whether particular information is necessary, then the filing person shall consult the Commission for guidance.

(b) The Supreme Court, the Committee, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, other boards, and the appointing authority or employing entity may require a filing person to file supplemental information in conjunction with the filing of that person's statement of economic interest. These supplemental filings requirements shall be filed with the Commission and included on the forms to be filed with the Commission. The Commission shall evaluate the supplemental forms as part of the statement of economic interest. The failure to file supplemental forms shall be subject to the provisions of G.S. 138A-25.

(c) Each statement of economic interest shall contain sworn certification by the filing person that the filing person has read the statement and that, to the best of the filing person's knowledge and belief, the statement is true, correct, and complete. The filing person's sworn certification also shall provide that the filing person has not transferred, and will not transfer, any asset, interest, or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(d) All information provided in the statement of economic interest shall be current as of the last day of December of the year preceding the date the statement of economic interest was due.

(e) The Commission shall prepare a written evaluation of each statement of economic interest relative to conflicts of interest and potential conflicts of interest. The Commission shall submit the evaluation to all of the following:

- (1) The filing person who submitted the statement.
- (2) The head of the agency in which the filing person serves.
- (3) The Governor for gubernatorial appointees and employees in agencies under the Governor's authority.
- (4) The Chief Justice for judicial officers and judicial employees.
- (5) The appointing or hiring authority for those public servants not under the Governor's authority.
- (6) The State Board of Elections for those filing persons who are elected.
- (7) The Committee, together with a copy of the statement of economic interest, for legislators.

"§ 138A-25. Failure to file.

(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify persons who have failed to file or persons whose statement has been deemed incomplete. For a person currently serving as a covered person, the Commission shall notify the person that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section.

(b) Any filing person who fails to file or complete a statement of economic interest within 30 days of the receipt of the notice, required under subsection (a) of this section, shall be subject to a fine of two hundred fifty dollars (\$250.00), to be imposed by the Commission.

(c) Failure by any filing person to file or complete a statement of economic interest within 60 days of the receipt of the notice, required under subsection (a) of this section, shall be deemed to be a violation of this Chapter and shall be grounds for disciplinary action under G.S. 138A-45.

"§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45.

"§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45.

"§§ 138A-28 through 30: [Reserved]

"Article 4.

"Ethical Standards for Covered Persons.

"§ 138A-31. Use of public position for private gain.

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit, direct or indirect, to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3). Disclosure of a covered person's position to an existing or prospective customer, supplier, or client is not considered advertising for purposes of this subsection when the disclosure could reasonably be considered material by the customer, supplier, or client.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television.

"§ 138A-32. Gifts.

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive

anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any gift from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal as defined in G.S. 120C-100.

(d) No public servant shall knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant's employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) Subsections (c) and (d) of this section shall not apply to any of the following:

- (1) Food and beverages for immediate consumption in connection with public events.
- (2) Informational materials relevant to the duties of the covered person or legislative employee.
- (3) Reasonable actual expenditures of the covered person or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a covered person's or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the covered person or legislative employee, or in order for the covered person or legislative employee to participate as a speaker or member of a panel; (ii) a legislator's or legislative employee's attendance and participation in meetings of a state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that person's public position, or as a member of a board, agency, or committee of such organization; or (iii) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a state, regional, national, or international legislative organization of which the public servant's agency is a member or the public servant is a member by virtue of that person's public position, provided the following conditions are met:
 - a. The reasonable actual expenditures shall be made by a lobbyist's principal, and not a lobbyist.

- b. Any educational meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
 - c. Any food, beverages, or entertainment must be provided to all attendees or defined groups of 10 or more attendees.
 - d. Any entertainment must be incidental to the principal agenda of the educational meeting.
- (4) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
- (5) Gifts accepted on behalf of the State for the benefit of the State.
- (6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist's principals.
- (7) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.
- (8) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
- a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.
 - b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
 - c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (f) of this section.
- (9) Gifts of personal property valued at less than one hundred dollars (\$100.00) given to a public servant in the commission of the public servant's official duties if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.
- (10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship not related to the person's public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

(f) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(g) A prohibited gift shall be declined, returned, paid for at fair market value, or donated immediately to charity or the State.

(h) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.
- (2) The employing entity's work time or resources are used.
- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(i) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86.

"§ 138A-33. Other compensation.

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties.

"§ 138A-34. Use of information for private gain.

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information.

"§ 138A-35. Other rules of conduct.

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees.

"§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall knowingly participate in an official action by the employing entity if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated, has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could reasonably be inferred that the interest or benefit would influence the public servant's participation in the official action. A potential benefit includes a detriment to a business competitor of (i) the public servant, (ii) a member of the public servant's extended family, or (iii) a business with which the public servant is associated.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter, from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the person presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

"§ 138A-37. Legislator participation in official actions.

(a) Except as permitted under G.S. 138A-38, no legislator shall knowingly participate in a legislative action if the legislator, a member of the legislator's extended family, the legislator's client, or a business with which the legislator is associated, has an economic interest in, or may reasonably and foreseeably benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the interest and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual economic interest does exist which would impair the legislator's independence of judgment. A potential benefit includes a detriment to a business competitor of (i) the legislator, (ii) a member of the legislator's extended family, or (iii) a business with which the legislator is associated. The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(b) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104.

"§ 138A-38. Permitted participation exception.

Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

- (1) The only interest or reasonably foreseeable benefit that accrues to the covered person, the covered person's extended family, or business with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
- (2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.
- (3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.
- (4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.
- (5) When action is ministerial only and does not require the exercise of discretion.
- (6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action

because the covered person is disqualified from acting under G.S. 130-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

- (7) When a public servant notifies the Commission in writing that the public servant judicial employee, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

"§ 138A-39. Disqualification to serve.

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties.

"§ 138A-40. Employment and supervision of members of covered person's extended family.

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person to a State office, or a position to which the covered person supervises or manages, except for positions at the General Assembly as permitted by the Legislative Services Commission. A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's extended family, except as specifically authorized by the public servant's or legislative employee's employing entity.

"§ 138A-41. Other ethics standards.

Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

"§§ 138A-42 through 44: [Reserved]

"Article 5.

"Violation Consequences.

"§ 138A-45. Violation consequences.

(a) Violation of this Chapter by any covered person or legislative employee is grounds for disciplinary action. Except as specifically provided in this Chapter and for perjury under G.S. 138A-12 and G.S. 138A-24, no criminal penalty shall attach for any violation of this Chapter.

(b) The willful failure of any public servant serving on a board to comply with this Chapter is misfeasance, malfeasance, or nonfeasance. In the event of misfeasance, malfeasance, or nonfeasance, the offending public servant serving on a board is subject

to removal from the board of which the public servant is a member. For appointees of the Governor and members of the Council of State, the appointing authority may remove the offending public servant. For appointees of the Speaker of the House of Representatives, the Speaker of the House of Representatives may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the Speaker of the House of Representatives, the Governor at the recommendation of the Speaker of the House of Representatives may remove the offending public servant. For appointees of the President Pro Tempore of the Senate, the President Pro Tempore of the Senate may remove the offending public servant. For appointees of the General Assembly made upon the recommendation of the President Pro Tempore of the Senate, the Governor at the recommendation of the President Pro Tempore of the Senate may remove the offending public servant. For public servants elected to a board by either the Senate or House of Representatives, the electing house of the General Assembly shall exercise the discretion of whether to remove the offending public servant. For all other appointees, the Commission shall exercise the discretion of whether to remove the offending public servant.

(c) The willful failure of any public servant serving as a State employee to comply with this Chapter is a violation of a written work order, thereby permitting disciplinary action as allowed by the law, including termination from employment. For employees of State departments headed by a member of the Council of State, the appropriate member of the Council of State shall make all final decisions on the manner in which the offending public servant shall be disciplined. For public servants who are judicial employees, the Chief Justice shall make all final decisions on the matter in which the offending judicial employee shall be disciplined. For legislative employees, the Legislative Services Commission shall make or refer to the hiring authority all final decisions on the matter in which the offending legislative employee shall be disciplined. For public servants appointed or elected for The University of North Carolina or the Community Colleges System, the appointing or electing authority shall make all final decisions on the matter in which the offending public servant shall be disciplined. For any other public servant serving as a State employee, the Governor shall make all final decisions on the manner in which the offending public servant shall be disciplined.

(d) The willful failure of any constitutional officer of the State to comply with this Chapter is malfeasance in office for purposes of G.S. 123-5.

(e) The willful failure of a legislator, other than the Lieutenant Governor, to comply with this Chapter is grounds for sanctions under G.S. 120-103.1.

(f) Nothing in this Chapter affects the power of the State to prosecute any person for any violation of the criminal law.

(g) The Commission may seek to enjoin violations of G.S. 138A-34."

SECTION 2.(a) G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(14) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes."

SECTION 2.(b) G.S. 116-7 is amended by adding a new subsection to read:

"(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the Board of Governors, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the

members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant."

SECTION 2.(c) G.S. 115D-2.1 is amended by adding a new subsection to read:

"(b1) Upon receipt of a referral from the State Ethics Commission in accordance with G.S. 138A-12(k) concerning a member of the State Board of Community Colleges, the principal clerk of the house of the General Assembly receiving the referral shall immediately refer the matter to the appropriate education committee of that house. That committee may recommend to that house a resolution providing for the removal of the Board member. If the committee's proposed resolution is adopted by a majority of the members present and voting of that house, the public servant shall be removed and the seat previously held by that Board member becomes vacant."

PART II. AMEND LEGISLATIVE ETHICS ACT.

SECTION 3. Article 7 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-32.6. Certain employment authority.

G.S. 114-2.3 and G.S. 147-17 shall not apply to the General Assembly."

SECTION 4. G.S. 120-85, 120-87(b), 120-88, and Part 2 of Article 14 of Chapter 120 of the General Statutes are repealed.

SECTION 5. Part 1 of Article 14 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-85.1. Definitions.

As used in this Article, the following terms mean:

- (1) Business with which associated. – As defined in G.S. 138A-3.
- (2) Confidential information. – As defined in G.S. 138A-3.
- (3) Economic interest. – As defined in G.S. 138A-3.
- (4) Immediate family. – As defined in G.S. 138A-3.
- (5) Legislator. – As defined in G.S. 138A-3.
- (6) Nonprofit corporation or organization with which associated. – As defined in G.S. 138A-3.
- (7) Vested trust. – As defined in G.S. 138A-3."

SECTION 6. G.S. 120-86 reads as rewritten:

"§ 120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate ~~household~~family, or to a business with which the legislator is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence the legislator in the discharge of the legislator's duties.

(b1) It shall be unlawful for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer, directly or indirectly, to threaten economically that legislator with the intent to influence that legislator in the discharge of the legislator's duties.

(d) ~~For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.~~

(e) Violation of subsection (a), (b), or (b1) is a Class F felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103. G.S. 120-103.1."

SECTION 7. G.S. 120-99(a) reads as rewritten:

"(a) The Legislative Ethics Committee is created ~~to~~ and shall consist of ~~ten~~ 12 members, ~~five~~ six Senators appointed by the President Pro Tempore of the Senate, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader, and ~~five~~ six members of the House of Representatives appointed by the Speaker of the House, among them – ~~two~~ three from a list of ~~four~~ six submitted by the Majority Leader and ~~two~~ three from a list of ~~four~~ six submitted by the Minority Leader."

SECTION 8. G.S. 120-99(c) is repealed.

SECTION 9. G.S. 120-101 reads as rewritten:

"§ 120-101. Quorum; expenses of members.

(a) ~~Six~~ Eight members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

(b) The members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties."

SECTION 10. G.S. 120-102 reads as rewritten:

"§ 120-102. Powers and duties of Committee.

(a) In addition to the other powers and duties specified in this Article, the Committee ~~has the following powers and duties~~ may:

- (1) ~~To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.~~
- (2) ~~To receive and file any information voluntarily supplied that exceeds the requirements of this Article.~~
- (3) ~~To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.~~
- (4) ~~To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.~~
- (5) ~~To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee~~

- ~~members in order to avoid conflict.~~ Prepare a list of ethical principles and guidelines to be used by legislators and legislative employees to identify potential conflicts of interest and prohibited behavior, and to suggest rules of conduct that shall be adhered to by legislators and legislative employees.
- (5a) Advise each General Assembly committee of specific danger areas where conflicts of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.
 - (6) ~~To advise~~ Advise General Assembly members or render written opinions if so requested by the member about questions of ethics or possible points of conflict and suggested standards of conduct of members upon ethical points raised.
 - (6a) Review, modify, or overrule advisory opinions issued to legislators by the State Ethics Commission under G.S. 138A-13.
 - (7) ~~To propose~~ Propose rules of legislative ethics and conduct. The rules, when adopted by the House of Representatives and the Senate, shall be the standards adopted for that term.
 - (8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, ~~to~~ investigate and dispose of the matter according to the terms of this Article.
 - (9) Investigate alleged violations in accordance with G.S. 120-103.1 and hire separate legal counsel, through the Legislative Services Commission, for these purposes.
 - (10) Adopt procedures to implement this Article.
 - (11) Perform other duties as may be necessary to accomplish the purposes of this Article.

(b) G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that both cochairs shall sign all subpoenas on behalf of the Committee. Notwithstanding any other law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties."

SECTION 11. G.S. 120-103 is repealed.

SECTION 12. Part 3 of Article 14 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-103.1. Investigations by the Committee.

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

- (1) The application or alleged violation of Chapter 138A of the General Statutes and Part 1 of this Article.
- (2) The application or alleged violation of rules adopted in accordance with G.S. 120-102.

- (3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.
- (b) Complaint. –
 - (1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.
 - (2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:
 - a. The complaint is frivolous or brought in bad faith.
 - b. The individuals and conduct complained of have already been the subject of a prior complaint.
 - c. The conduct complained of is primarily a matter more appropriately and adequately addressed and handled by other federal, State, or local agencies or authorities, including law enforcement authorities. If other agencies or authorities are conducting an investigation of the same actions or conduct involved in a complaint filed under this section, the Committee may stay its complaint investigation pending final resolution of the other investigation.
 - (3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.
 - (4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.
- (c) Investigation of Complaints by the Committee. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of the referral of the complaint with the Committee, the Committee shall refer the complaint for hearing in accordance with subsection (i) of this section or initiate an investigation of a complaint or dismiss the complaint. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee can take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations.
- (d) On a referral from the State Ethics Commission, the Committee shall do at least one of the following:
 - (1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.
 - (2) Conduct further investigations and hearings under this section.
 - (3) Dismiss the complaint.
- (e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance

of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary Inquiry. – If the Committee determines at the end of its preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and the legislator against whom the complaint was filed.

(h) Notice. – If at the end of its preliminary inquiry, the Committee determines to proceed with further investigation into the conduct of a legislator, the Committee shall provide written notice to the individual who filed the complaint and the legislator as to the fact of the investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response with the Committee.

(i) Hearing. –

- (1) The Committee shall give full and fair consideration to all complaints and responses received. If the Committee determines that the complaint cannot be resolved without a hearing, or if the legislator requests a public hearing, a hearing shall be held.
- (2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.
- (3) At any hearing held by the Committee:
 - a. Oral evidence shall be taken only on oath or affirmation.
 - b. The hearing shall be held in closed session unless the legislator requests that the hearing be held in open session. In any event, the deliberations by the Committee on a complaint may be held in closed session.
 - c. The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of a matter before the Committee under this section, in any of the following ways:

- (1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.
- (2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:
 - a. Issue a public or private admonishment to the legislator.
 - b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the

Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – In the case of a dismissal or private admonishment, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee shall be confidential and not matters of public record, except when the legislator under inquiry requests in writing that the complaint, response, records, and findings be made public prior to the time the Committee recommends sanctions. At such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee."

SECTION 13. G.S 120-104 reads as rewritten:

"§ 120-104. Advisory opinions.

(a) At the request of any member of the General Assembly, the Committee shall render formal advisory opinions on specific questions involving legislative ethics. ~~These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee.~~

(b) The Committee shall receive and review recommended advisory opinions issued to legislators, except the Lieutenant Governor, by the State Ethics Commission under G.S. 138A-13. The opinion shall not be considered a formal advisory opinion until the advisory opinion is adopted by the Committee. The Committee may modify or overrule the recommended advisory opinions issued to legislators by the State Ethics Commission, and the final action on the opinion by the Committee shall control.

(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under G.S. 138A-13(a).

(d) Staff to the Committee may issue informal, nonbinding advisory opinions under procedures adopted by the Committee.

(e) The Committee may interpret Chapter 138A of the General Statutes as it applies to legislators, except the Lieutenant Governor, and these interpretations are binding on all legislators upon publication.

(f) The Committee shall submit its formal advisory opinions to the State Ethics Commission, and the State Ethics Commission shall publish the Committee's opinions under G.S. 138A-13(d).

(g) Except as provided under subsection (f) of this section, requests for advisory opinions, advisory opinions issued under this section, and advisory opinions received from the State Ethics Commission are confidential and not matters of public record."

SECTION 14. G.S. 120-105 reads as rewritten:

"§ 120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article ~~as well as sections to cover the administrative branch of government and~~ Chapter 138A and Chapter 120C of the General Statutes. The Committee shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government."

SECTION 15. G.S. 143B-350 reads as rewritten:

"§ 143B-350. Board of Transportation – organization; powers and duties, etc.

...

(i) Disclosure of Contributions. – Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term "immediate family", as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. – A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the ~~Governor or the Governor's designee and in a manner as prescribed by the Governor.~~ State Ethics Commission as a supplemental filing to the Statement of Economic Interest filed under Article 3 of Chapter 138A of the

General Statutes. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. – The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to ~~any other code of ethics that may be applicable to members of the Board or to the Secretary,~~ the provisions of Chapter 138A of the General Statutes. A code of ethics adopted pursuant to this subsection ~~shall~~:shall include

- (1) ~~Include~~ a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.
- (2) ~~Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~
- (3) ~~Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.~~

~~Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person~~

~~is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.~~

(l) Additional Requirements for Disclosure Statements. – All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in ~~nature~~ nature, conducted in conjunction with the State Ethics Commission, and shall include input from the Institute of Government, ~~the North Carolina Board of Ethics,~~ the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

...."

PART III. AMEND LOBBYING LAWS.

SECTION 16.(a) G.S. 120-47.7B, as enacted by S.L. 2005-456, is effective when this act becomes law.

SECTION 16.(b) G.S. 120-47.7B is repealed effective January 1, 2007.

SECTION 17. Article 9A of Chapter 120 of the General Statutes is repealed.

SECTION 18. The General Statutes are amended by adding a new Chapter to read:

"Chapter 120C.

"Lobbying.

"Article 1.

"General Provisions.

"§ 120C-100. Definitions.

(a) As used in this Article, the following terms mean:

- (1) Commission. – The State Ethics Commission under Chapter 138A of the General Statutes.
- (2) Designated individual. – A legislator, legislative employee, or public servant.
- (3) Executive action. – The preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, defeat, or rejection of a policy, guideline, request for proposal, procedure, regulation, or rule by a public servant purporting to act in an official capacity. This term does not include any of the following:
 - a. Present, prior, or possible proceedings of a contested case hearing under Chapter 150B of the General Statutes, of a judicial nature, or of a quasi-judicial nature.
 - b. A public servant's communication with a person, or another person on that person's behalf, with respect to any of the following:
 1. Applying for a permit, license, determination of eligibility, or certification.

2. Making an inquiry about or asserting a benefit, claim, right, obligation, duty, entitlement, payment, or penalty.
 3. Making an inquiry about or responding to a request for proposal made under Chapter 143 of the General Statutes.
 4. Ratemaking.
 - c. Internal administrative functions, including those functions exempted from the definition of "rule" in G.S. 150B-2(8a).
 - d. Ministerial functions.
 - e. A public servant's communication with a person or another person on that person's behalf with respect to public comments made at an open meeting, or submitted as written comment, on a proposed executive action in response to a request for public comment, provided the identity of the person on whose behalf the comments are made is disclosed as part of the public participation, and no reportable expenditure is made.
- (4) In session. – One of the following:
- a. The General Assembly is in extra session from the date the General Assembly convenes until the General Assembly:
 1. Adjourns sine die.
 2. Recesses or adjourns for more than 10 days.
 - b. The General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly:
 1. Adjourns sine die.
 2. Recesses or adjourns for more than 10 days.
- (5) Legislative action. – The preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter, whether or not the matter is identified by an official title, general title, or other specific reference, by a legislator or legislative employee acting or purporting to act in an official capacity. It also includes the consideration of any bill by the Governor for the Governor's approval or veto under Article II, Section 22(1) of the Constitution or for the Governor to allow the bill to become law under Article II, Section 22(7) of the Constitution.
- (6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, but not including legislators, members of the Council of State, or pages.
- (7) Legislator. – As defined in G.S. 138A-3 and G.S. 120C-104.
- (8) Liaison personnel. – Any State employee or officer whose principal duties, in practice or as set forth in that person's job description, include lobbying designated individuals.
- (9) Lobbying. – Any of the following:

- a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that person's immediate family.
- b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that person's immediate family with the intention of influencing current or future legislative or executive action, or both.

The term "lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both.

(10) Lobbyist. – An individual who engages in lobbying and meets any of the following criteria:

- a. Is employed by a person for the intended purpose of lobbying.
- b. Represents another person, but is not directly employed by that person, and receives compensation for the purpose of lobbying. For the purposes of this sub-subdivision, the term compensation shall not include reimbursement of actual travel and subsistence.
- c. Contracts for economic consideration for the purpose of lobbying.
- d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if less than five percent (5%) of that employee's actual duties in any 30-day period include engaging in lobbying as defined in subdivision (9)a. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter.

(11) Lobbyist principal and principal. – The person on whose behalf the lobbyist lobbies. In the case where a lobbyist is compensated by a law firm, consulting firm, or other entity retained by a person for lobbying, the principal is the person whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist's principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist's principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter.

(12) Reportable expenditure. – Any of the following that directly or indirectly is made to, at the request of, for the benefit of, or on the behalf of a designated individual or that individual's immediate family member:

- a. Any advance, contribution, conveyance, deposit, distribution, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge, or thing of value greater than ten dollars (\$10.00) per designated individual per single calendar day.

- b. A contract, agreement, promise, or other obligation whether or not legally enforceable.
- (13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals for the purpose of influencing or attempting to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:
 - a. A broadcast, cable, or satellite transmission.
 - b. An e-mail communication or a Web site posting.
 - c. A communication delivered by print media as defined in G.S. 163-278.38Z.
 - d. A letter or other written communication delivered by mail or by comparable delivery service.
 - e. Telephone.
 - f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices.

(b) Except as otherwise defined in this section, the definitions in Article 1 of Chapter 138A of the General Statutes apply in this Chapter.

"§ 120C-101. Rules and forms.

(a) The Commission shall adopt any rules necessary to interpret and carry out the provisions of this Chapter. The Secretary of State shall adopt any rules, orders, forms, and definitions as are necessary to carry out the provisions of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.

(b) With respect to the forms adopted under subsection (a) of this section, the Secretary of State shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall maintain a mailing list of interested persons as provided in G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

- (1) Publish the proposed rules in the North Carolina Register.
- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

- (3) Notify persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this section becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code.

"§ 120C-102. Advisory opinions.

(a) At the request of any person affected by this Chapter, the Commission shall render advisory opinions on specific questions involving the meaning and application of this Chapter and that person's compliance therewith. The request shall be in writing and relate to real or reasonably anticipated fact settings or circumstances. The Commission shall issue advisory opinions having prospective application only. Reliance upon a requested written advisory opinion on a specific matter shall immunize the designated individual, lobbyist, lobbyist's principal, or other person requesting that written advisory opinion from both of the following:

- (1) Investigation by the Commission.
- (2) Any adverse action by the employing entity.

(b) Staff to the Commission may issue advisory opinions under procedures adopted by the Commission.

(c) The Commission shall publish its advisory opinions at least once a year, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsection (c) of this section, requests for advisory opinions and advisory opinions issued pursuant to this section are confidential and not matters of public record.

"§ 120C-103. Lobbying education program.

(a) The Commission shall develop and implement a lobbying education and awareness program designed to instill in all designated individuals, lobbyists, and lobbyists' principals a keen and continuing awareness of their obligations and sensitivity to situations that might result in real or potential violation of this Chapter or other related laws. The Commission shall make basic lobbying education and awareness presentations to all designated individuals upon their election, appointment, or hiring and shall offer periodic refresher presentations as the Commission deems appropriate. Every designated individual shall participate in a lobbying presentation approved by the Commission within six months of the person's election, appointment, or hiring and shall attend refresher lobbying education presentations at least every two years thereafter in a manner the Commission deems appropriate. The Commission shall also make lobbying education and awareness programs available to lobbyists and lobbyists' principals. Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for lobbying education.

(b) The Commission shall publish a newsletter containing summaries of the advisory opinions, policies, procedures, and interpretive bulletins as issued from time to time, but no less than once per year. The newsletter shall be distributed to all designated individuals, lobbyists, and lobbyists' principals. Publication under this subsection may be done electronically.

(c) The Commission shall assemble and maintain a collection of relevant State laws, rules, and regulations that set forth lobbying standards applicable to designated individuals. The collection of laws, rules, and regulations shall be made available electronically as resource material to designated individuals, lobbyists, and lobbyists' principals upon request.

"§ 120C-104. Chapter applies to candidates for certain offices.

For purposes of this Chapter, the term "legislator" as defined in G.S. 120C-100(7) and the term "public servant" as defined in G.S. 138A-3(30)a. shall include a person having filed a notice of candidacy for such office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or nominated under G.S. 163-114 or G.S. 163-98.

"Article 2.

"Registration.

"§ 120C-200. Lobbyist registration procedure.

(a) A lobbyist shall file a separate registration statement for each principal the lobbyist represents with the Secretary of State before engaging in any lobbying. It shall be unlawful for a person to lobby without registering within one business day of engaging in any lobbying as defined in G.S. 120C-100(9) unless exempted by this Chapter.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, complete address, and telephone number; the registrant's place of business; the full name, complete address, and telephone number of each principal the lobbyist represents; and a general description of the matters on which the registrant expects to act as a lobbyist.

(c) Each lobbyist shall file an amended registration form with the Secretary of State no later than 10 business days after any change in the information supplied in the lobbyist's last registration under subsection (b) of this section. Each supplementary registration shall include a complete statement of the information that has changed.

(d) Each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable.

(e) Each lobbyist shall identify himself or herself as a lobbyist prior to engaging in lobbying communications or activities with a designated individual. The lobbyist shall also disclose the identity of the lobbyist's principal connected to that lobbying communication or activity.

"§ 120C-201. Lobbyist's registration fee.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State at the time of each lobbyist registration. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyists registering to represent persons who have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"§§ 120C-202 through 205: Reserved for future codification.

"§ 120C-206. Lobbyist's principal's authorization.

(a) A written authorization signed by the lobbyist's principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within 10 business days after the lobbyist's registration.

(b) The form of the authorization shall be prescribed by the Secretary of State and shall include the lobbyist's principal's full name, complete address, and telephone number, name and title of the official signing for the lobbyist's principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed.

"§ 120C-207. Lobbyist's principal's fees.

(a) Except as provided for in subsection (b) of this section, a fee of one hundred dollars (\$100.00) is due and payable to the Secretary of State at the time the principal's first authorization statement is filed each calendar year for a lobbyist. Fees so collected shall be deposited in the General Fund of the State. The Secretary of State shall allow fees required under this section to be paid electronically but shall not require the fees to be paid electronically.

(b) The Secretary of State shall adopt rules providing for a waiver or reduction of the fees required by this section for lobbyist's principals that have been granted nonprofit status under 26 U.S.C. § 501(c)(3).

"§§ 120C-208 through 214: Reserved for future codification.

"§ 120C-215. Other persons required to register.

(a) A person not otherwise required to register under this Chapter shall register and report when the total expense incurred for solicitation of others exceeds three thousand dollars (\$3,000) during any 90-day period. Expenses incurred shall mean the costs of producing and transmitting the communication and, if the communication is made at a conference, meeting, or similar event, the costs of planning, hosting, sponsoring, and attending the conference, meeting, or similar event.

(b) A person required to register and report under this section shall be referred to as a "solicitor" for purposes of this Chapter.

(c) No fee shall be charged for registering as a solicitor.

"§§ 120C-216 through 219: Reserved for future codification.

"§ 120C-220. Publication and availability of registrations.

(a) The Secretary of State shall make available as soon as practicable the registrations of the lobbyists in an electronic, searchable format.

(b) The Secretary of State shall make available as soon as practicable the authorizations of the lobbyists' principals in an electronic, searchable format.

(c) The Secretary of State shall make available as soon as practicable the registrations of other persons required by this Chapter to file a registration in an electronic, searchable format.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each designated individual and the State Legislative Library a list of all persons who have registered as lobbyists and whom they represent. A supplemental list of lobbyists shall be furnished periodically every 20 days while the General Assembly is in session and every 60 days thereafter. For each special session of the General Assembly, a supplemental list of lobbyists shall be furnished to the State Legislative Library.

(e) All lists required by this section may be furnished electronically.

"Article 3.

"Prohibitions and Restrictions.

"§ 120C-300. Contingency fees prohibited.

(a) No person shall act as a lobbyist for compensation that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to a person doing business with the State who is engaged in sales with respect to that business with the State whose regular compensation agreement includes commissions based on those sales.

(c) Any compensation paid to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund.

"§ 120C-301. Election influence prohibited.

(a) No person shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

(b) No lobbyist, lobbyist's principal, or other person required to register under this Chapter shall attempt to influence the action of any designated individual by the promise of financial support of the designated individual's candidacy, or by threat of financial support in opposition to the designated individual's candidacy in any future election.

"§ 120C-302. Campaign contributions prohibition.

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.

"§ 120C-303. Gifts by lobbyists and lobbyist's principals prohibited.

(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist's principal may directly or indirectly give a gift to a designated individual.

(b) Subsection (a) of this section shall not apply to gifts as described in G.S. 138A-32(e).

(c) The offering or giving of a gift in compliance with this Chapter without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86, but shall be subject to civil fines under G.S. 120C-602(b).

"§ 120C-304. Restrictions.

(a) No legislator or former legislator may register as a lobbyist under this Chapter:

(1) While in office.

(2) Before the later of the close of the session in which the legislator served or six months after leaving office.

(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist while in office or within six months after leaving office.

(c) No person serving as a public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within six months after separation from employment.

(d) No individual registered as a lobbyist under this Chapter shall serve as a treasurer as defined in G.S. 163-278.6(19) or an assistant campaign treasurer for a political committee for the election of a member of the General Assembly or a Constitutional officer of the State.

(e) A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person. Nothing herein shall be construed to prohibit appointment by any unit of local government.

(f) Any appointment or registration made in violation of this section shall be void.

"§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall permit a designated individual, or that person's immediate family member, to use the cash or credit of the lobbyist for the purpose of lobbying unless the lobbyist is in attendance at the time of the reportable expenditure.

"Article 4.

"Reporting.

"§ 120C-400. Reporting of reportable expenditures.

For purposes of this Chapter, all reportable expenditures made for the purpose of lobbying shall be reported, including the following:

- (1) Reportable expenditures benefiting or made on behalf of a designated individual, or those persons' immediate family members, in the regular course of that individual's employment.
- (2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist's principal and a designated individual, or that person's immediate family member, in effect during the reporting period or the previous 12 months.
- (3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist's principal or other employer.

"§ 120C-401. Reporting generally.

(a) Reports shall be filed whether or not reportable expenditures are made and shall be due 10 business days after the end of the reporting period.

(b) Each report shall set forth the fair market value or face value if shown, date, a description of the reportable expenditure, name and address of the payee, or beneficiary, and name of any designated individual, or that person's immediate family member connected with the reportable expenditure. When more than 15 designated individuals benefit from a reportable expenditure, no names of individuals need be reported provided that the report identifies the approximate number of designated individuals benefiting and the basis for their selection, including the name of the legislative body, committee, caucus, or other group whose membership list is a matter of public record in accordance with G.S. 132-1 or including a description of the group that clearly distinguishes its purpose or composition from the general membership of the General

Assembly. The approximate number of immediate family members of designated individuals who benefited from the reportable expenditure shall be listed separately.

(c) Reportable expenditures shall be reported using the following categories:

- (1) Transportation and lodging.
- (2) Entertainment.
- (3) Food and beverages.
- (4) Meetings and events.
- (5) Gifts.
- (6) Other reportable expenditures.

(d) Each report shall be in the form prescribed by the Secretary of State, which may include electronic reports.

(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist's principal, or other person required to report of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with a late filing fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.

(f) Failure to file a required report in one of the manners prescribed in this section shall void any and all registrations of the lobbyist, lobbyist's principal, or solicitor. No lobbyist, lobbyist's principal, or solicitor may register or reregister until full compliance with this section has occurred.

(g) Appeal of a decision by the Secretary of State under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

(h) The Secretary of State may adopt rules to facilitate complete and timely disclosure of required reporting, including additional categories of information, and to protect the addresses of payees under protective order issued pursuant to Chapter 50B of the General Statutes or participating in the Address Confidentiality Program pursuant to Chapter 15C of the General Statutes. The Secretary of State shall not impose any penalties or late filing fees upon a lobbyist, lobbyist's principal, or solicitor for subsequent failures to comply with the requirements of this section if the Secretary of State failed to provide the required notification under subsection (e) of this section.

"§ 120C-402. Lobbyist's reports.

(a) Each lobbyist shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.
- (4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10).

(c) In addition to the reports required by this section, each lobbyist incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative

employees, and is due within 10 business days after the end of the month. The information on the monthly reportable expenditure report shall also be included in each quarterly report required by subsection (a) of this section.

"§ 120C-403. Lobbyist's principal's reports.

(a) Each lobbyist's principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist's principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due 10 business days after the end of the reporting period, and shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Compensation paid to all lobbyists during the quarter. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer that compensates for lobbying.
- (4) Reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.
- (5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9) and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars (\$200.00).

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

"§ 120C-404. Solicitor's reports.

(a) Each solicitor shall file quarterly reports under oath with the Secretary of State.

(b) The report shall include all of the following:

- (1) All reportable expenditures made for the purpose of lobbying during the reporting period.
- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).

"§ 120C-405. Report availability.

(a) All reports filed under this Chapter shall be open to public inspection upon filing.

(b) The Secretary of State shall coordinate with the State Board of Elections to create a searchable Web-based database of reports filed under this Chapter and reports filed under Subchapter VIII of Chapter 163 of the General Statutes.

"Article 5.

"Liaison Personnel.

"§ 120C-500. Liaison personnel.

(a) All agencies and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and

other units of government in the executive branch, except local units of government, shall designate liaison personnel to lobby for legislative action.

(b) No State funds may be used to contract with persons who are not employed by the State to lobby legislators and legislative employees.

(c) No more than two persons may be designated as liaison personnel for each agency and constitutional officers of the State, including all boards, departments, divisions, constituent institutions of The University of North Carolina, and other units of government in the executive branch.

"§ 120C-501. Applicability of Chapter on liaison personnel.

(a) Except as otherwise provided in this section, this Chapter shall not apply to liaison personnel.

(b) G.S. 120C-200 shall apply to liaison personnel. No registration fee shall be required for registration under this subsection.

(c) Liaison personnel designated under this Article shall file reports under G.S. 120C-402.

(d) G.S. 120C-303 shall apply to liaison personnel with respect to legislators and legislative employees.

(e) The University of North Carolina or any of its constituent institutions, or designated liaison personnel of those persons, shall not give, for the purpose of lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students.

"Article 6.

"Violations and Enforcement.

"§ 120C-600. Powers and duties of the Secretary of State.

(a) The Secretary of State shall perform systematic reviews of reports required to be filed under Articles 4 and 8 of this Chapter on a regular basis to assure complete and timely disclosure of reportable expenditures. The Secretary of State shall refer to the Commission any complaints of violations of this Chapter other than those related solely to Article 4 or Article 8 of this Chapter.

(b) The Secretary of State may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of Articles 4 and 8 of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of Articles 4 and 8 of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of Articles 4 and 8 of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.4.

"§ 120-601. Powers and duties of the Commission.

(a) The Commission may investigate complaints of violations of this Chapter and shall refer complaints related solely to Article 4 or Article 8 of this Chapter to the Secretary of State.

(b) The Commission may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under

this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered records of criminal investigations under G.S. 132-1.

"§ 120C-602. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Article 4 or 8 of this Chapter up to five thousand dollars (\$5,000) per violation. In addition to the criminal penalties set forth in this section, the Commission may levy civil fines for a violation of any provision of this Chapter except Article 4 or Article 8 of this Chapter up to five thousand dollars (\$5,000) per violation.

"§ 120C-603. Enforcement by district attorney and Attorney General.

(a) The Commission may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the Commission or any member employee of the Commission shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter.

"Article 7.

"Exemptions.

"§ 120C-700. Persons exempted from this Chapter.

Except as otherwise provided in Article 8, the provisions of this Chapter shall not be construed to apply to any of the following:

- (1) An individual solely engaged in expressing a personal opinion or stating facts or recommendations on legislative action or executive action to a designated individual and not acting as a lobbyist.
- (2) A person appearing before a committee, commission, board, council, or other collective body whose membership includes one or more designated individuals at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist with respect to the legislative or executive action for which that person appeared.
- (3) A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district, or other governmental agency, when appearing solely in connection with

matters pertaining to the office and public duties, except for a person designated as liaison personnel under G.S. 120C-500.

- (4) A person performing professional services in drafting bills, or in advising and rendering opinions to clients, or to designated individuals on behalf of clients, as to the construction and effect of proposed or pending legislative or executive action where the professional services are not otherwise connected with the legislative or executive action.
- (5) A person who owns, publishes, or is an employee of any recognized news medium, while engaged in the acquisition and publication of news or news and commentary on behalf of that recognized news medium.
- (6) Designated individuals while acting in their official capacity.
- (7) A person responding to inquiries from a designated individual and who engages in no further activities as a lobbyist in connection with that inquiry.
- (8) A person who is a political committee as defined in G.S. 163-278.6(14), that person's employee, or that person's contracted service provider.

"Article 8.

"Miscellaneous.

"§ 120C-800. Reportable expenditures made by persons exempted or not covered by this Chapter.

(a) If a designated individual accepts a reportable expenditure made for the purpose of lobbying with a total value of over two hundred dollars (\$200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure.

(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(c) If a designated individual accepts a scholarship valued over two hundred dollars (\$200.00) from a person, or group of persons, acting together, exempted or not covered by this Chapter, the person, or group of persons, granting the scholarship shall report the date of the scholarship, a description of the event involved, the name and address of the person, or group of persons, granting the scholarship, the name of the designated individual accepting the scholarship, and the estimated fair market value.

(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the designated individual accepting the scholarship shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with G.S. 138A-24(a)(2).

(e) This section shall not apply to any of the following:

- (1) Lawful campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.
- (2) Any gift from an extended family member to a designated individual.
- (3) Gifts associated primarily with the designated individual's or that person's immediate family member's employment.
- (4) Gifts, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.
- (5) A thing of value that is paid for by the State.

(f) Within 10 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest.

(g) For purposes of this section, the term "scholarship" shall mean a grant-in-aid to attend a conference, meeting, or other similar event."

SECTION 19. Sections 2 and 3 of S.L. 2005-456 are repealed.

SECTION 20.(a) G.S. 120-86.1 reads as rewritten:

"§ 120-86.1. **Personnel-related action unethical.**

It shall be unethical for a legislator to take, promise, or threaten any legislative action, as defined in ~~G.S. 120-47.1(4)~~, G.S. 120C-100(5), for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions subject to Chapter 126 of the General Statutes."

SECTION 21. G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) "Limited contributor" means a lobbyist registered ~~pursuant to Article 9A of Chapter 120 under Chapter 120C~~ of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in ~~G.S. 120-47.1(7)~~, G.S. 120C-100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered ~~pursuant to Article 9A of Chapter 120 under Chapter 120C~~ of the General Statutes."

SECTION 22. The authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the North Carolina Board of Ethics of the Office of the Governor are transferred to the State Ethics Commission created in Section 1 of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

SECTION 23.(a) Persons holding covered positions on January 1, 2007, shall file statements of economic interest under Article 3 of Chapter 138A of the General Statutes by March 15, 2007.

SECTION 23.(b) Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 on or before January 1, 2008.

SECTION 24. 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.

SECTION 25. Sections 4 through 15 and Sections 17 through 21 of this act become effective January 1, 2007, and G.S. 120C-304, as enacted by Section 18 of this act, applies to appointments made on or after that date. Sections 16, 24, and 25 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to gifts received on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 12:24 p.m. on the 4th day of August, 2006.

H.B. 2873

Session Law 2006-202

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"§ 87-87. Authority to adopt rules, regulations, and procedures.

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping equipment, and equipment. The Environmental Management Commission shall be responsible for the administration of this Article. With respect thereto it Article and shall:

- (1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation throughout the State, in connection with proposed rules and regulations and amendments ~~thereto;~~thereto.
- (2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant ~~thereto;~~thereto.

- (3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this ~~Article;~~Article.
- (4) Issue such additional regulations as may be necessary to carry out the provisions of this ~~Article;~~ and Article.
- (5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.
- (6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.
- (7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97."

SECTION 3. G.S. 87-88 reads as rewritten:

"§ 87-88. General standards and requirements.

(a) Prior Permission. – Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) Reports. – Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination. – Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be

completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. – Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. – In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. – Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for ~~domestic-human~~ consumption and all private drinking water wells shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. – No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. –

- (1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.
- (2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.
- (3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

SECTION 4. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

- (1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.
- (2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private

drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Health Services to Adopt Drinking Water Testing Rules. – The Commission for Health Services shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Health Services may by rule require testing for additional parameters if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health.

(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) Authority Not Limited. – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Health Services to protect public health."

SECTION 5. G.S. 130A-4 reads as rewritten:

"§ 130A-4. Administration.

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

SECTION 6. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing"~~. "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 7. G.S. 143-300.8 reads as rewritten:**"§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health Services. Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 8. G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

Became law upon approval of the Governor at 1:59 p.m. on the 7th day of August, 2006.

H.B. 914**Session Law 2006-203**

AN ACT TO RECODIFY MANY OF THE PROVISIONS OF THE EXECUTIVE BUDGET ACT AND THE CAPITAL IMPROVEMENT PLANNING ACT INTO A STATE BUDGET ACT THAT REVISES AND CLARIFIES THE PROCEDURES FOR PREPARING, ENACTING, AND ADMINISTERING THE STATE BUDGET, TO MAKE CONFORMING CHANGES, AND TO REPEAL VARIOUS STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Except for sections recodified by this act, Article 1 of Chapter 143 of the General Statutes is repealed.

SECTION 2. Article 1B of Chapter 143 of the General Statutes and Section 23.11 of S.L. 2006-66 are repealed.

SECTION 3. The General Statutes are amended by adding a new Chapter to read:

"Chapter 143C.

"State Budget Act.

"Article 1.

"General Provisions.

"§ 143C-1-1. Purpose and definitions.

(a) Title of Chapter. – This Chapter is the 'State Budget Act' and may be cited by that name.

(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter.

(c) Purpose. – This Chapter establishes procedures for the following:

(1) Preparing the recommended State budget.

(2) Enacting the State budget.

(3) Administering the State budget.

(d) Definitions. – The following definitions apply in this Chapter:

(1) Appropriation. – An enactment by the General Assembly authorizing the withdrawal of money from the State treasury. An enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation.

(2) Biennium. – The two fiscal years beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year.

(3) Budget. – A plan to provide and spend money for specified programs, functions, activities, or objects during a fiscal year.

(4) Budget year. – The fiscal year for which a budget is proposed and enacted.

(5) Capital improvement. – A term that includes real property acquisition, new construction or rehabilitation of existing facilities, and repairs and renovations.

(6) Capital Improvements Appropriations Act. – An act of the General Assembly containing appropriations for one or more capital improvement projects.

(7) Certified budget. – The budget as enacted by the General Assembly including adjustments made for (i) distributions to State agencies from statewide reserves appropriated by the General Assembly, (ii) distributions of reserves appropriated to a specific agency by the General Assembly, and (iii) organizational or budget changes directed by the General Assembly but left to the Director to carry out.

(8) Controller. – The Office of the State Controller.

(9) Current Operations Appropriations Act. – An act of the General Assembly estimating revenue availability for and appropriating money for the current operations of State government during one or more budget years.

- (10) Departmental receipt. – Fees, licenses, federal funds, grants, fines, penalties, tuition, and other similar collections or credits generated by State agencies in the course of performing their governmental functions that are applied to the cost of a program administered by the State agency or transferred to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.1, and that are not defined as tax proceeds or nontax revenues. Departmental receipts may include moneys transferred into a fiscal year from a prior fiscal year.
- (11) Director. – The Director of the Budget, who is the Governor.
- (12) Encumbrance. – A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.
- (13) Fiscal period. – A fiscal biennium beginning in odd-numbered years or the first or second fiscal year within a fiscal biennium.
- (14) Fiscal year. – The annual period beginning July 1 and ending on the following June 30.
- (15) Fund. – A fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on stated programs, activities, and objectives of State government.
- (16) General Fund Operating Budget. – The sum of all appropriations from the General Fund for a fiscal year, except appropriations for (i) capital improvements, including repairs and renovations, and (ii) one-time expenditures due to natural disasters or other emergencies shall not be included.
- (17) Information technology. – As defined in G.S. 147-33.81(2).
- (18) Non-State entity. – Any of the following that is not a State agency: an individual, a firm, a partnership, an association, a county, a corporation, or any other organization or group acting as a unit. The term includes a unit of local government and public authority.
- (19) Nontax revenue. – Revenue that is not a tax proceed and that is required by statute to be credited to the General Fund.
- (20) Object or line item. – An expenditure or receipt in a recommended or enacted budget that is designated in the Budget Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.
- (21) Performance information. – The organizational structure, agency activity statements, performance indicators, and analyses of program efficiency and effectiveness.
- (22) 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.
- (23) Purpose or program. – A group of objects or line items for support of a specific activity outlined in a recommended or enacted budget that is designated by a nine-digit fund code in accordance with the Budget

Code Structure of the North Carolina Accounting System Uniform Chart of Accounts prescribed by the Office of the State Controller.

- (24) State agency. – A unit of the executive, legislative, or judicial branch of State government, such as a department, an institution, a division, a commission, a board, a council, or The University of North Carolina. The term does not include a unit of local government or a public authority.
- (25) State funds. – Any moneys including federal funds deposited in the State treasury except moneys deposited in a trust fund or agency fund as described in G.S. 143C-1-3.
- (26) State resources. – All financial and nonfinancial assets of the State.
- (27) State revenue. – An increase, other than interfund transfers and debt issue proceeds, in the financial assets of any State governmental or proprietary fund.
- (28) Statutory appropriation. – An appropriation that authorizes the withdrawal of funds from the State treasury during fiscal years extending beyond the current fiscal biennium, without further act of the General Assembly.
- (29) 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.
- (30) Unreserved fund balance. – The available General Fund cash balance effective June 30 after excluding documented encumbrances, unearned revenue, federal grants, statutory requirements, and other legal obligations to General Fund cash as determined by the State Controller. Beginning unreserved fund balance equals ending unreserved fund balance from the prior fiscal year.

"§ 143C-1-2. Appropriations: constitutional requirement; reversions.

(a) Appropriation Required to Withdraw State Funds From the State Treasury. – In accordance with Section 7 of Article V of the North Carolina Constitution, no money shall be drawn from the State treasury but in consequence of appropriations made by law. A law enacted by the General Assembly that authorizes the expenditure of money from the State treasury is an appropriation; however, an enactment by the General Assembly that authorizes, specifies, or otherwise provides that funds may be used for a particular purpose is not an appropriation.

(b) Reversions. – Unless otherwise provided by law, at the end of the fiscal year the unexpended, unencumbered balance of an appropriation reverts to the fund from which the appropriation was made; except that (i) an appropriation to the General Assembly shall not revert unless otherwise provided by the Legislative Services Commission, (ii) an appropriation for a capital improvement project shall revert as provided by G.S. 143C-8-11, and (iii) an appropriation for the implementation of information technology (IT) projects shall not revert until the project is implemented or abandoned.

"§ 143C-1-3. Fund types.

(a) Types. – The Controller shall account for State resources through use of the fund types listed in this subsection. The Controller may not establish a fund type that differs from the listed fund types unless the Governmental Accounting Standards Board has approved the use of the different fund type.

The fund types are described as follows, except that where a conflict exists between a description used in this section and the definition of the corresponding fund type issued by the Governmental Accounting Standards Board, it is presumed that the definition issued by the Governmental Accounting Standards Board shall prevail.

Governmental Funds.

- (1) Capital Projects Funds. – Accounts for financial resources to be used for the acquisition or construction of major capital facilities other than those financed by proprietary funds or in trust funds for individuals, private organizations, or other governments. Capital outlays financed from general obligation bond proceeds should be accounted for through a capital projects fund.
- (2) Debt Service Funds. – Accounts for the accumulation of resources for, and the payment of, general long-term debt principal and interest.
- (3) General Fund. – Accounts for all financial resources except those required to be reported in another fund.
- (4) Special Revenue Funds. – Accounts for the proceeds of specific revenue sources, other than trusts for individuals, private organizations, or other governments or for major capital projects, that are legally restricted to expenditure for specified purposes.
- (5) Permanent Funds. – Accounts for resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs.

Proprietary Funds.

- (6) Enterprise Funds. – Accounts for any activity for which a fee is charged to external users for goods or services. Activities are required to be reported as enterprise funds if any one of the following criteria is met. Each of these criteria should be applied in the context of the activity's principal revenue sources.
 - a. The activity is financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity.
 - b. Laws or regulations require that the activity's costs of providing services, including capital costs, be recovered with fees and charges rather than with taxes or similar revenues.
 - c. The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs.
- (7) Internal Service Funds. – Accounts for any activity that provides goods or services to other funds, departments, or agencies of the primary government and its component units, or to other governments, on a cost-reimbursement basis. Internal service funds should be used only if the reporting government is the predominant participant in the activity. Otherwise, the activity should be reported as an enterprise fund.

Agency and Trust Funds.

- (8) Agency Funds. – Accounts for resources held by the reporting government in a purely custodial capacity. Agency funds typically involve only the receipt, temporary investment, and remittance of

fiduciary resources to individuals, private organizations, or other governments.

- (9) Investment Trust Funds. – Accounts for the external portion of investment pools reported by the sponsoring government.
- (10) Pension and Other Employee Benefit Trust Funds. – Accounts for resources that are required to be held in trust for the members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other employee benefit plans.
- (11) Private-Purpose Trust Funds. – Accounts for all other trust arrangements under which principal and income benefit individuals, private organizations, or other governments.

(b) Designation. – If State resources are designated by law as a fund or an account within a fund and there is a conflict between the legal designation and the appropriate accounting designation of the State resources, then the Controller shall determine the appropriate designation of the State resources based on the intended use and financial treatment of the State resources as set out in the law establishing the fund or account. The Controller shall determine the fund type of all separate funds and account for them accordingly. The Controller shall keep the total number of funds to the minimum number practical.

(c) Notwithstanding subsections (a) and (b) of this section, funds established for The University of North Carolina and its constituent institutions pursuant to the following statutes are exempt from Chapter 143C of the General Statutes and shall be accounted for as provided by those statutes, except that the provisions of Article 8 of Chapter 143C of the General Statutes shall apply to the funds: G.S. 116-35, 116-36, 116-36.1, 116-36.2, 116-36.4, 116-36.5, 116-36.6, 116-44.4, 116-68, 116-220, 116-235, 116-238.

"§ 143C-1-4. Interest earnings credited to the General Fund; interest earnings on Highway Fund and Highway Trust Fund credited to those funds.

(a) Interest Earnings Credited to the General Fund. – Unless otherwise provided by law, interest earned on all funds shall be credited to the General Fund.

(b) Exception for Interest Earnings on Highway Fund and Highway Trust Fund. – Interest earned by the Highway Fund and the Highway Trust Fund shall be credited to the Highway Fund and the Highway Trust Fund respectively.

"Article 2.

"Director of the Budget.

"§ 143C-2-1. Governor is Director of the Budget.

(a) Governor is Director of the Budget. – The Governor is the Director of the Budget. In that capacity, the Governor is required by Article III, Section 5(3) of the North Carolina Constitution to prepare and recommend a budget and to administer the budget as enacted by the General Assembly. The Governor's powers under this Chapter extend to all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known. The Governor may delegate the authority to perform a power or duty of the Director under this Chapter to the Office of State Budget and Management or to one or more persons.

(b) State Agencies and Non-State Entities to Provide Information Requested by the Director; Examination of Persons and Agencies by Director. – Upon request, all State agencies and non-State entities subject to this act shall furnish the Director, in the form and at the time requested by the Director, any information desired by the Director

in relation to their respective activities or fiscal affairs so long as the information is not confidential pursuant to federal or State law. The Director may subpoena and examine under oath any person directly or indirectly responsible for the operations of any executive State agency or any non-State entity subject to the provisions of this Chapter.

(c) Governor May Request State Auditor to Audit State Agency or Non-State Entity Receiving State Funds. – As authorized by G.S. 147-64.6(c)(3), the Governor may request the State Auditor to make an audit of or cause an audit to be made of the books and accounts of any State agency and may require that the cost of the audit be borne by the State agency. The Governor may also request the State Auditor to make an audit of or cause an audit to be made of the books and records of any non-State entity receiving State funds pursuant to the State Auditor's authority granted in G.S. 147-64.7.

"§ 143C-2-2. Collection of State Budget Statistics.

The Director shall coordinate the efforts of governmental agencies to collect, disseminate, and analyze economic, demographic, and social statistics pertinent to State budgeting. The Director shall do all of the following:

- (1) Prepare and release the official demographic and economic estimates and projections for the State.
- (2) Conduct special economic and demographic analyses and studies to support statewide budgeting.
- (3) Develop and coordinate cooperative arrangements with federal, State, and local governmental agencies to facilitate the exchange of data to support State budgeting.
- (4) Report major trends that influence revenues and expenditures in the State budget in the current fiscal year and that may influence revenues and expenditures over the next five fiscal years.

"§ 143C-2-3. Fiscal analysis required for any State agency bill that affects the budget.

A State agency proposing a bill that affects the State budget shall prepare a fiscal analysis for the bill and submit the analysis to the Fiscal Research Division upon introduction of the bill. The fiscal analysis shall estimate the impact of the legislation on the State budget for the first five fiscal years the legislation would be in effect.

"§ 143C-2-4. Director of the Budget may direct State Treasurer to borrow money for certain payments.

The Director of the Budget, by and with the consent of the Governor and Council of State, may authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State agencies during each fiscal year.

"Article 3.

"Development of the Governor's Recommended Budget.

"§ 143C-3-1. Budget estimate for the legislative branch.

The Legislative Administrative Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director

may recommend changes to these estimates in the budget submitted to the General Assembly.

"§ 143C-3-2. Budget estimate for the judicial branch.

The Administrative Officer of the Courts shall give the Director an estimate of the financial needs of the judicial branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the judiciary shall be approved and certified by the Chief Justice. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include these estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly.

"§ 143C-3-3. Budget requests from State agencies in the executive branch.

(a) General Provisions. – A State agency that is not in the legislative or judicial branch of government shall submit its budget requests for the upcoming fiscal period to the Director in accordance with the schedule prescribed by the Director. The Director shall give each State agency instructions to be used in estimating the funds required to provide necessary State government programs and capital improvements. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller and shall be approved and certified by the respective head or responsible officer of the agency submitting them.

(b) University of North Carolina System Request. – Notwithstanding subsections (c), (d), and (e) of this section, pursuant to G.S. 116-11 the Board of Governors shall prepare a unified budget request for all of the constituent institutions of The University of North Carolina, including repairs and renovations, capital fund requests, and information technology.

(c) Repairs and Renovations Funds Request. – In addition to any other information requested by the Director, any State agency proposing to repair or renovate an existing facility shall accompany that request with all of the following:

- (1) A description of current deficiencies and proposed corrections with a review and evaluation of that proposal prepared by the Department of Administration.
- (2) An estimate of project costs and cash flow requirements approved by the Department of Administration.
- (3) A certification of project feasibility as described in G.S. 143-341.
- (4) An explanation of the method by which the repair or renovation is to be financed.

(d) Capital Funds Request. – In addition to any other information requested by the Director, any State agency proposing to (i) acquire real property, (ii) construct a new facility, (iii) expand the building area (sq. ft.) of an existing facility, or (iv) rehabilitate an existing facility to accommodate new or expanded uses shall accompany that request with all of the following:

- (1) An estimate of its space needs and other physical requirements, together with a review and evaluation of that estimate prepared by the Department of Administration.
- (2) An estimate of project costs and cash flow requirements approved by the Department of Administration.
- (3) A certification of project feasibility as described in G.S. 143-341.
- (4) An explanation of the method by which the acquisition, construction, or rehabilitation is to be financed.

- (5) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation.
- (6) An estimate of revenues, if any, to be derived from the project, covering the first five years of operation.

This subsection does not apply to requests for State resources for railroad, highway, or bridge construction or renovation.

(e) Information Technology Request. – In addition to any other information requested by the Director, any State agency requesting significant State resources, as defined by the Director, for the purpose of acquiring or maintaining information technology shall accompany that request with all of the following:

- (1) A statement of its needs for information technology and related resources, including expected improvements to programmatic or business operations, together with a review and evaluation of that statement prepared by the State Chief Information Officer.
- (2) A statement setting forth the requirements for State resources, together with an evaluation of those requirements by the State Chief Information Officer that takes into consideration the State's current technology, the opportunities for technology sharing, the requirements of Article 3D of Chapter 147 of the General Statutes, and any other factors relevant to the analysis.
- (3) A statement by the State Chief Information Officer that sets forth viable alternatives, if any, for meeting the agency needs in an economical and efficient manner.
- (4) In the case of an acquisition, an explanation of the method by which the acquisition is to be financed.

This subsection shall not apply to requests submitted by the General Assembly, the Administrative Office of the Courts, or The University of North Carolina.

"§ 143C-3-4. Budget requests from non-State entities.

Unless otherwise provided by law, budget requests from non-State entities shall be submitted to the Director or to a State agency designated by the Director. A State agency designated to receive a budget request from a non-State entity shall evaluate the request and forward its evaluation to the Director in accordance with procedures established by the Director. This section does not apply to the General Assembly or to actions of the General Assembly to appropriate funds to non-State entities.

"§ 143C-3-5. Budget recommendations and budget message.

(a) Budget Proposals. – The Governor shall present budget recommendations to each regular session of the General Assembly at a mutually agreeable time to be fixed by joint resolution.

(b) Odd-Numbered Fiscal Years. – In odd-numbered years the budget recommendations shall include the following components:

- (1) A Recommended State Budget setting forth goals for improving the State with recommended expenditure requirements, funding sources, and performance information for each State government program and for each proposed capital improvement. The Recommended State Budget may be presented in a format chosen by the Director, except that the Recommended State Budget shall clearly distinguish program continuation requirements, program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital

Improvements Plan and as required by G.S. 143C-8-6. The Director shall include as continuation requirements the amounts the Director proposes to fund for the enrollment increases in public schools, community colleges, and the university system.

(2) A Budget Support Document showing, for each budget code and purpose or program in State government, accounting detail corresponding to the Recommended State Budget.

a. The Budget Support Document shall employ the North Carolina Accounting System Uniform Chart of Accounts adopted by the State Controller to show both uses and sources of funds and shall display in separate parallel columns all of the following: (i) actual expenditures and receipts for the most recent fiscal year for which actual information is available, (ii) the certified budget for the preceding fiscal year, (iii) the currently authorized budget for the preceding fiscal year, (iv) program continuation requirements for each fiscal year of the biennium, (v) proposed expenditures and receipts for each fiscal year of the biennium, and (vi) proposed increases and decreases.

b. The Budget Support Document shall include detailed information on recommended expenditures for capital improvements as required by G.S. 143C-8-6.

c. The Budget Support Document shall include accurate projections of receipts, expenditures, and fund balances. 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 recommends a change that will result in collections in the budget year that differ from prior year actuals, or the Director otherwise determines there is a more reasonable basis upon which to accurately project receipts. Revenue and expenditure detail provided in the Budget Support Document shall be no less detailed than the two-digit level in the North Carolina Accounting System Uniform Chart of Accounts as prescribed by the State Controller.

d. The Budget Support Document shall clearly identify all proposed expenditures supported by existing or proposed appropriations, including statutory appropriations.

(3) A Current Operations Appropriation Act that makes appropriations for each fiscal year of the upcoming biennium for the operating expenses of all State agencies as contained in the Recommended State Budget, together with a Capital Improvements Appropriations Act that authorizes any capital improvements projects.

(4) The biennial State Information Technology Plan as outlined in G.S. 147-33-72B to be consistent in facilitating the goals outlined in the Recommended State Budget.

(c) Even-Numbered Fiscal Years. – In even-numbered years, the Governor may recommend changes in the enacted budget for the second year of the biennium. These recommendations shall be presented as amendments to the enacted budget and shall be incorporated in a recommended Current Operations Appropriation Act and a

recommended Capital Improvements Appropriations Act as necessary. Any recommended changes shall clearly distinguish program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital Improvements Plan and as required by G.S. 143C-8-6. The Governor shall provide sufficient supporting documentation and accounting detail, consistent with that required by G.S. 143C-3-5(b), corresponding to the recommended amendments to the enacted budget.

(d) Funds Included in Budget. – Consistent with requirements of the North Carolina Constitution, Article 5, Section 7(a), the Governor's Recommended State Budget, together with the Budget Support Document, shall include recommended expenditures of State funds from all Governmental and Proprietary Funds, as those funds are described in G.S. 143C-1-3. Except where provided otherwise by federal law, funds received from the federal government become State funds when deposited in the State treasury and shall be classified and accounted for in the Governor's budget recommendations no differently than funds from other sources.

(e) Revenue Estimates. – The recommended Current Operations Appropriations Act shall contain a statement showing the estimates of General Fund availability, Highway Fund availability, and Highway Trust Fund availability upon which the Recommended State Budget is based.

(f) Budget Message. – The Governor's budget recommendations shall be accompanied by a written budget message that does all of the following:

- (1) Explains the goals embodied in the recommended budget.
- (2) Explains important features of the activities anticipated in the budget.
- (3) Explains the assumptions underlying the statement of revenue availability.
- (4) Sets forth the reasons for changes from the previous biennium or fiscal year, as appropriate, in terms of programs, program goals, appropriation levels, and revenue yields.
- (5) Identifies anticipated sources of funding for major spending initiatives.
- (6) Prepares a fiscal analysis that addresses the State's budget outlook for the upcoming five-year period. This fiscal analysis shall include detailed estimates for five years for any proposals to create new or significantly expand programs and for proposals to create new or change existing law.

(g) Different Gubernatorial Administrations. – For years in which there will be a change in gubernatorial administrations, the incumbent Governor shall complete the budget recommendations and budget message by December 15 and deliver them to the Governor-elect.

"Article 4.

"Budget Requirements.

"§ 143C-4-1. Annual balanced budget.

The budget recommended by the Governor and the budget enacted by the General Assembly shall be balanced and shall include two fiscal years beginning on July 1 of each odd-numbered year. Each fiscal year and each fund shall be balanced separately. The budget for a fund is balanced when the beginning unreserved fund balance for the fiscal year, together with the projected receipts to the fund during the fiscal year, is equal to or greater than the sum of appropriations from the fund for that fiscal year.

"§ 143C-4-2. Savings Reserve Account and appropriation of General Fund unreserved fund balance.

(a) Creation and Source of Funds. – The Savings Reserve Account is established as a reserve in the General Fund. The Controller shall reserve to the Savings Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. – The Savings Reserve Account is a component of the unappropriated General Fund balance. Funds reserved to the Savings Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly.

(c) Goal for Savings Reserve Account Balance. – The General Assembly recognizes the need to establish and maintain sufficient reserves to address unanticipated events and circumstances such as natural disasters, economic downturns, threats to public safety, health, and welfare, and other emergencies. It is a goal of the General Assembly and the State to accumulate and maintain a balance in the Savings Reserve Account equal to or greater than eight percent (8%) of the prior year's General Fund operating budget.

"§ 143C-4-3. Repairs and Renovations Reserve Account.

(a) Creation and Source of Funds. – The Repairs and Renovations Reserve Account is established as a reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account one-fourth of any unreserved fund balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year.

(b) Use of Funds. – The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

- (1) Roof repairs and replacements;
- (2) Structural repairs;
- (3) Repairs and renovations to meet federal and State standards;
- (4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
- (5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., as amended;
- (6) Improvements to meet fire safety needs;
- (7) Improvements to existing facilities for energy efficiency;
- (8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
- (9) Improvements and renovations to improve use of existing space;
- (10) Historical restoration;
- (11) Improvements to roads, walks, drives, utilities infrastructure; and
- (12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the building area (sq. ft.) of an existing facility unless required in order to comply with federal or State codes or standards.

(c) Funds Available Only Upon Appropriation. – Funds reserved to the Repairs and Renovations Reserve Account shall be available for expenditure only upon an act of appropriation by the General Assembly.

"§ 143C-4-4. Contingency and Emergency Fund.

(a) Creation. – The Contingency and Emergency Fund is established within the General Fund. The General Assembly shall appropriate a specific amount to this fund for contingencies and emergencies in the Current Operations Appropriations Act or other appropriations bill.

(b) Authorized Uses. – Notwithstanding any other provision of law, funds appropriated to the Contingency and Emergency Fund may be used only for expenditures required: (i) by a court or Industrial Commission order, (ii) to respond to events as authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act, or (iii) for other statutorily authorized purposes or other contingencies and emergencies.

(c) Request for Allocation. – A State agency may request an allocation from the Contingency and Emergency Fund by submitting a request in writing to the Director along with any information required by the Director. If the Director approves the request, the Director shall present the request, together with a recommendation, to the Council of State for its approval. If the Council of State approves the request, the Director shall order the Controller to allocate the funds requested. The Director shall report on the request at the next scheduled meeting of the Joint Legislative Commission on Governmental Operations.

"§ 143C-4-5. Non-State match restrictions.

Whenever money is required to match an appropriation made for a specific purpose by the State of North Carolina, the recipient of the appropriation shall actually receive as a gift, grant, earnings in actual money, or a pledge that can be used as collateral in any prudent loan transaction, the matching amount required. The recipient shall retain the matching amount received in its possession until spent for that purpose and shall spend an equal percentage of the appropriation and of the matching amount each time an expenditure is made, unless the individual appropriation requires otherwise.

"§ 143C-4-6. General Fund operating budget size limited.

(a) Size Limitation. – Except as otherwise provided in this section, the General Fund operating budget each fiscal year shall not be greater than seven percent (7%) of the projected total State personal income for that fiscal year.

(b) Increase in Size Limitation. – To the extent that any percent increase in appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii) the costs of providing health insurance for teachers and State employees, exceeds the percent increase in State personal income growth for the same period, the limitation on the size of the General Fund operating budget provided in subsection (a) of this section for that fiscal year shall be increased by the dollar amount represented by the excess percentage. For all subsequent fiscal years, the percent limitation contained in subsection (a) shall then be increased to reflect that dollar adjustment.

(c) Fiscal Reports. – The Office of State Budget and Management and the Fiscal Research Division of the General Assembly shall each submit a tentative estimate of total State personal income for the upcoming fiscal year to the General Assembly no later than February 1 of each year. The Office and the Fiscal Research Division shall each submit a final projection of total State personal income for the upcoming fiscal year to the General Assembly no later than May 1 of each year. The General Assembly shall use the lower of the two final projections to calculate the limitation on the size of the General Fund operating budget provided in this section.

"§ 143C-4-7. Limit on number of permanent positions budgeted.

The total number of permanent budgeted positions established in State agencies shall not be increased by the end of any State fiscal year by a greater percentage rate of

change than the percentage rate of change of the residential population growth for the State of North Carolina. The Office of State Budget and Management shall be responsible for computing the annual percentage rates of change for each measure. The population growth rate shall be computed by averaging the annual residential population growth rate in each of the preceding 10 fiscal years as stated in the annual estimates of residential population in North Carolina made by the United States Census Bureau. The growth rate of the number of budgeted positions shall be computed by averaging the annual rate of growth of State budgeted positions in each of the preceding 10 fiscal years. The total number of permanent budgeted positions established in State agencies shall be computed by adding the total number of budgeted Full-Time Equivalents from all fund types. This section does not apply to State-funded positions supported by the State in a local public school system or local community college institution.

"Article 5.

"Enactment of the Budget.

"§ 143C-5-1. Rules for the introduction of the Governor's appropriations bills.

The Current Operations Appropriations Act recommended by the Governor and the Capital Improvements Appropriations Act recommended by the Governor shall be introduced by the chairs of the committee on appropriations in each house of the General Assembly. This section shall be considered and treated as a rule of procedure in the Senate and House of Representatives unless provided otherwise by a rule of either branch of the General Assembly.

"§ 143C-5-2. Order of appropriations bills.

Each house of the General Assembly shall first pass its version of the Current Operations Appropriations Act on third reading and order it sent to the other chamber before placing any other appropriations bill on the calendar for second reading. This section does not apply to the following bills:

- (1) An appropriations bill to respond to a disaster as defined by G.S. 166A-4(1).
- (2) An appropriations bill making adjustments to the current year budget.
- (3) An appropriations bill authorizing continued operations at current funding levels.

"§ 143C-5-3. Availability statement required.

The Current Operations Appropriations Act enacted by the General Assembly shall state the General Fund, Highway Fund, and Highway Trust Fund availability used as basis for appropriations from those funds.

"§ 143C-5-4. Enactment deadline.

The General Assembly shall enact the Current Operations Appropriations Act by June 15 of odd-numbered years and by June 30 of even-numbered years in which a Current Operations Appropriations Act is enacted.

"§ 143C-5-5. Committee report used to construe intent of budget acts.

A committee report incorporated by reference in the Current Operations Appropriations Act or the Capital Improvements Appropriations Act and distributed on the floor of the House of Representatives and of the Senate as part of the explanation of the act is to be construed with the appropriate act in interpreting its intent. If a report conflicts with the act, the act prevails. The Director of the Fiscal Research Division of the Legislative Services Commission shall send a copy of the reports to the Director.

"Article 6.

"Administration of the Budget.

"Part 1. Certification and Administration of the Budget.

"§ 143C-6-1. Budget enacted by the General Assembly; certified budgets of State agencies.

(a) Governor to Administer the Budget as Enacted by the General Assembly. – In accordance with Section 5(3) of Article III of the North Carolina Constitution, the Governor shall administer the budget as enacted by the General Assembly. All appropriations of State funds now or hereafter made to the State agencies and non-State entities authorize expenditures only for the (i) purposes or programs and (ii) objects or line items enumerated in the Recommended State Budget and the Budget Support Document recommended to the General Assembly by the Governor, as amended and enacted by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, or any other act affecting the State budget. The Governor shall ensure that appropriations are expended in strict accordance with the budget enacted by the General Assembly.

(b) Departmental Receipts. – Departmental receipts collected to support a program or purpose shall be credited to the fund from which appropriations have been made to support that program or purpose.

(c) Certification of the Budget. – The Director of the Budget shall certify to each State agency the amount appropriated to it for each program and each object from all governmental and proprietary funds. The certified budget for each State agency shall reflect the total of all appropriations enacted for each State agency by the General Assembly in the Current Operations Appropriations Act, the Capital Improvements Appropriations Act, and any other act affecting the State budget. The certified budget for each State agency shall follow the format of the Budget Support Document as modified to reflect changes enacted by the General Assembly.

"§ 143C-6-2. Methods to avoid deficit.

(a) Appropriations. – Each appropriation is maximum and conditional. The expenditures authorized by an appropriation from a fund shall be made only if necessary and only if the aggregate revenues to the fund during each fiscal year of the biennium, when added to any unreserved fund balance from the previous fiscal year, are sufficient to support the expenditures.

(b) Revenue Collections. – The Director, with the assistance of the Secretary of Revenue and other officials collecting or receiving appropriated State revenue, shall continuously survey the revenue collections. If the Director finds that revenues to any fund, when added to the beginning unreserved fund balance in that fund, will be insufficient to support appropriations from that fund, the Director shall immediately notify the General Assembly that a deficit is anticipated. The Director shall report in a timely manner to the General Assembly a plan containing the expenditure reductions and other lawful measures as the Director is implementing in order to avert the deficit.

(c) Local Governments Funds. – In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated to local governments unless the Governor has exhausted all other sources of revenue of the State including any appropriated surplus remaining in the treasury at the beginning of the fiscal period.

In accordance with Section 19 of Article I of the North Carolina Constitution and the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue. This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State.

"§ 143C-6-3. Allotments.

To receive the operating funds appropriated to it, a State agency shall submit to the Director, at intervals and in a format prescribed by the Director, a request for an allotment of the amount estimated to be required for the agency's operating costs during the ensuing fiscal period. The Director shall approve or modify the allotment requests, and the State Controller shall implement the allotments as approved or modified by the Director.

"§ 143C-6-4. Budget Adjustments Authorized.

(a) Findings. – The General Assembly recognizes that even the most thorough budget deliberations may be affected by unforeseeable events. Under limited circumstances set forth in this section, the Director may adjust the enacted budget by making transfers among lines of expenditure, purposes, or programs or by increasing expenditures funded by departmental receipts. Under no circumstances, however, shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

(b) Adjustments to the Certified Budget. – Notwithstanding the provisions of G.S. 143C-6-1, a State agency may, with approval of the Director of the Budget, spend more than was authorized in the certified budget for all of the following:

- (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 authorized in the certified budget for the purpose or program.
- (2) A purpose or program if the overexpenditure of the purpose or program is:
 - a. Required by a court or Industrial Commission order;
 - b. Authorized under G.S. 166A-5(1)a.9. of the Emergency Management Act; or
 - c. Required to call out the national guard.
- (3) A purpose or program not subject to the provisions of subdivision (b)(2) of this subsection, but only in accord with the following restrictions: (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, (ii) the scope of the purpose or program is not increased, (iii) the overexpenditure is authorized on a nonrecurring basis, and (iv) under no circumstances shall the total requirements for a State department exceed the department's certified budget for the fiscal year by more than three percent (3%) without prior consultation with the Joint Legislative Commission on Governmental Operations.

(c) Overexpenditures Reported. – The Director shall report quarterly, beginning October 31, to the Joint Legislative Commission on Governmental Operations on overexpenditures approved by the Director under subdivisions (2) and (3) of subsection (b) of this section.

(d) Overexpenditures in Senate Budget. – The President Pro Tempore of the Senate may approve expenditures for more than was authorized in the enacted budget for objects or line items in the budget of the Senate.

(e) Overexpenditures in House of Representatives Budget. – The Speaker of the House of Representatives may approve expenditures for more than was authorized in the enacted budget objects or line items in the budget of the House of Representatives.

(f) Transfers Between Line Items or Programs in General Assembly Budget Other Than Senate and House of Representatives. – Expenditures exceeding amounts authorized for programs, objects, or line items in the budget of the General Assembly other than those of the Senate and House of Representatives shall be approved jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(g) Transfers in The University of North Carolina Budget. – Transfers or changes within the budget of The University of North Carolina may be made as provided in Article 1 of Chapter 116 of the General Statutes.

"§ 143C-6-5. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation; no fee increases that the General Assembly has rejected.

(a) Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, or funds allocated from the Repair and Renovations Account in accordance with G.S. 143C-4-3, funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143C-4-4, and funds exempted from Chapter 143C in accordance with G.S. 143C-1-3(c) may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this subsection, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill which fails a reading, or if the purpose is included in the version of a bill that passes one house, but the bill is enacted without the purpose.

(b) Notwithstanding any other provision of law, no fee shall be increased if the General Assembly has rejected an increase of that fee for the current fiscal period. For the purpose of this subsection, the General Assembly has rejected a fee increase when that fee increase is included in a bill which fails a reading, or if the fee increase is included in the version of a bill that passes one house, but the bill is enacted without the fee increase.

"§ 143C-6-6. Positions included in the State Payroll.

(a) Before a State agency establishes a new position or changes the funding of an existing position, the agency shall submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that funds for the action are included in the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the Controller of the approval. The Controller shall not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(b) Payments on behalf of employees for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases, required employer salary-related contributions for retirement benefits, death benefits, the Disability Income Plan and social security for employees shall be paid from the General Fund or the 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 contribution requirements shall be paid from the same source that supplies the remainder of the employee's salary.

(c) This section does not apply to The University of North Carolina.

"§ 143C-6-7. Compliance with Chapter and appropriations acts by State agencies.

(a) Compliance With Chapter and Appropriations Acts. – Except as otherwise provided by law, all expenditures of State funds by a State agency shall be made in

compliance with the State budget as enacted by the General Assembly and certified by the Director. If the Director finds that a State agency has spent or encumbered State funds for an unauthorized purpose, the Director shall take appropriate administrative action to ensure that no further irregularities occur and shall report to the Attorney General any facts that pertain to an apparent violation of a penal statute or an apparent instance of malfeasance, misfeasance, or nonfeasance by a person.

(b) Repayment of Funds Spent for an Unauthorized Purpose. – In addition to the provisions of subsection (a) of this section, if the Director finds that a State agency violated this section, the Director shall withhold any future allocations for the unauthorized purpose and shall also withhold future allocations to the Department in an amount equal to the funds unlawfully spent.

"§ 143C-6-8. State agencies may incur financial obligations only if authorized by the Director of the Budget and subject to the availability of appropriated funds.

Unless otherwise authorized by the Director as provided by law, purchase orders, contracts, salary commitments, and any other financial obligations by State agencies shall be subject to the availability of appropriated funds or available funds that are not State funds as defined in this Chapter.

"§ 143C-6-9. Use of lapsed salary savings.

Lapsed salary savings may be expended only for nonrecurring purposes or line items.

"Part 2. Highway Appropriations.

"§ 143C-6-11. Highway appropriation.

(a) General Provisions. – Appropriations made for transportation projects are subject to the provisions in this section. If the provisions in this section conflict with the budget acts, the budget acts prevail.

(b) Cash Flow Management of Transportation Projects. – Transportation Project funds shall be budgeted, expended, and accounted for on a 'cash flow' basis. Pursuant to this end, transportation project contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(c) Appropriations Are for Payments and Contract Commitments to Be Made in the Appropriation Fiscal Year. – The appropriations for transportation projects are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Transportation project contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each transportation project appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

(d) Payments Subject to Availability of Funds. – The annual appropriations for transportation projects shall be expended only to the extent that sufficient funds are available in the Highway Fund.

(e) Retainage Fully Funded. – The Department of Transportation shall fully fund retainage from transportation project contracts in the year in which the work is performed.

(f) Five Percent (5%) of the Cash Balance Required. – The Department of Transportation shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total transportation project contract obligations. In the event this cash position is not maintained, no further transportation project contract commitments may be entered into until the cash balance

has been regained. For the purposes of awarding contracts involving federal aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.

(g) Anticipation of Revenues. – In awarding State transportation project contracts requiring payments beyond a biennium, the Director may anticipate revenues as authorized and certified by the General Assembly to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second and subsequent fiscal years' contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.

(h) Amounts Encumbered. – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subsection (c) above. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

(i) Provision Incorporated in Contracts. – The provisions of subsection (h) of this section shall be incorporated verbatim in all transportation project contracts.

(j) Existing Contracts Are Not Affected. – The provisions of this section shall not apply to transportation project contracts awarded by the Department of Transportation prior to July 15, 1980.

(k) The Department of Transportation shall do all of the following:

- (1) Utilize cash flow financing to the extent possible to fund transportation projects with the goal of reducing the combined average daily cash balance of the Highway Fund and the Highway Trust Fund to an amount equal to the twelve percent (12%) of the combined estimate of the yearly receipts of the Funds. The target amount shall include an amount necessary to make all municipal-aid funding requirements of the Department.
- (2) Establish necessary management controls to facilitate use of cash flow financing, such as establishment of a financial planning committee, development of a monthly financing report, establishment of

appropriate fund cash level targets, review of revenue forecasting procedures, and reduction of accrued unbilled costs.

- (3) Report annually, on October 1 of each year, to the Joint Legislative Transportation Oversight Committee on its cash management policies and results.

"Part 3. Non-State Entities Receiving State Funds.

"§ 143C-6-12. Payments to nonprofits.

Except as otherwise provided by law, an annual appropriation of one hundred thousand dollars (\$100,000) or less to or for the use of a nonprofit corporation shall be made in a single annual payment. An annual appropriation of more than one hundred thousand dollars (\$100,000) to or for the use of a nonprofit corporation shall be made in quarterly or monthly payments, in the discretion of the Director of the Budget.

"§ 143C-6-13. 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 Treasury.

(b) 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 the information required by G.S. 143C-6-14 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 may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(c) 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.

"§ 143C-6-14. State grant funds: administration; oversight and reporting requirements.

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

- (1) "Grant" and "grant funds" means State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (2) "Grantee" means a non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (3) "Subgrantee" means a non-State entity that receives State funds as a grant 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.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency 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 agency may disburse the grant funds.

(c) 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. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. – 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 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 this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The 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 State 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 grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant 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 (b) and (c) of this section.
- (7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all 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 (i) of this section.

- (9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.
- (10) Provide procedures for the suspension of further disbursements or use of 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 grant funds.
- (12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee if the grantee or subgrantee is unable to fulfill the purposes of the grant.

(e) Rules Are Subject to the Administrative Procedure Act. – 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) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The Office of State Budget and Management, after consultation with the administering State agency, shall have the power to suspend disbursement of grant funds to grantees or subgrantees, to prevent further use of grant funds already disbursed, and to recover 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.

(g) Audit Oversight. – The State Auditor has audit oversight, with respect to 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 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 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 grant funds.

(h) Report on Grant Recipients That Failed to Comply. – 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 with respect to grant funds received in the prior fiscal year.

(i) State Agencies to Submit Grant List to Auditor. – No later than October 1 of each year, each State agency shall submit a list to the State Auditor, in the format prescribed by the State Auditor, of every grantee to which the agency disbursed grant funds in the prior fiscal year. The list shall include the amount disbursed to each grantee and other information as required by the State Auditor to comply with the requirements of this section.

"Article 7."Federal and Other Receipts.**"§ 143C-7-1. Funds creating an obligation.**

(a) Report to Director. – A State agency that submits to the federal government or to any other party an application for funds that will be subject to this Chapter shall first provide to the Director a copy of the application along with any related information the Director may require.

(b) Contract Provision. – A State agency that receives funds pursuant to an application that must be reported to the Director under subsection (a) of this section shall include in any related contract or other grant instrument a clause specifically stating that the expenditure of money deposited in the State treasury is subject to acts of appropriation by the General Assembly.

"§ 143C-7-2. Federal Block Grants.

(a) Plans Submitted and Reviewed. – The Secretary of each State agency that receives and administers federal Block Grant funds shall prepare and submit the agency's Block Grant plans to the Director of the Budget. The Director of the Budget shall submit the Block Grant plans to the Fiscal Research Division of the General Assembly not later than February 28 of each odd-numbered calendar year and not later than April 30 of each even-numbered calendar year.

(b) Information To Be Included in Plans. – Each State agency shall submit a separate Block Grant plan for each Block Grant received and administered by the agency, and each plan shall include all of the following:

- (1) A delineation of the proposed dollar amount by activity and by category, including dollar amounts to be used for administrative costs.
- (2) A comparison of the proposed funding with two prior years' program budgets.

"Article 8."Budgeting Capital Improvement Projects.**"§ 143C-8-1. Legislative intent; purpose.**

(a) Legislative Intent. – The General Assembly recognizes the need to establish a comprehensive process for capital improvement planning and budgeting that is fully integrated with State financial planning and debt management.

(b) Capital Improvement Planning and Budgeting Process. – The capital improvement planning and budgeting process shall include the following elements:

- (1) An inventory of facilities owned by State agencies.
- (2) Criteria used to evaluate capital improvement needs.
- (3) A six-year capital improvement needs estimate.
- (4) A six-year capital improvements plan.
- (5) Recommendations for capital improvements set forth in the Recommended State Budget as specified in G.S. 143C-3-5.

(c) Office of State Budget and Management to Manage Planning Process. – The Office of State Budget and Management has responsibility for management of the capital improvement planning process. The Director of the Budget may assign to any State agency or institution such duties and responsibilities as may, in the Director's judgment, be necessary to the successful administration of the capital improvement planning process.

"§ 143C-8-2. Capital facilities inventory.

The Department of Administration shall develop and maintain an automated inventory of all facilities owned by State agencies pursuant to G.S. 143-341(4). The

inventory shall include the location, occupying agency, ownership, size, description, condition assessment, maintenance record, parking and employee facilities, and other information to determine maintenance needs and prepare life-cycle cost evaluations of each facility listed in the inventory. The Department of Administration shall update and publish the inventory at least once every three years. The Department shall also record in the inventory acquisitions of new facilities and significant changes in existing facilities as they occur.

"§ 143C-8-3. Capital improvement needs criteria.

The Office of State Budget and Management shall develop a weighted list of factors that may be used to evaluate the need for capital improvement projects. The list shall include all of the following:

- (1) Preservation, adequacy and use of existing facilities.
- (2) Health and safety considerations.
- (3) Operational efficiencies.
- (4) Projected demand for governmental services.

"§ 143C-8-4. Agency capital improvement needs estimates.

(a) Needs Estimate Required. – On or before September 1 of each even-numbered year, each State agency shall submit to the Office of State Budget and Management and to the Division of Fiscal Research a six-year capital improvement needs estimate. This estimate shall describe the agency's anticipated capital needs for each year of the six-year planning period. Capital improvement needs estimates shall be shown in two parts.

(b) Repairs and Renovations Needs Estimate. – The first part of the capital improvement needs estimates shall include only requirements for repairs and renovations necessary to maintain the existing use of existing facilities. Each proposed repair and renovation expenditure shall be justified by reference to the Facilities Condition Assessment Program operated by the Office of State Construction.

(c) Real Property and New Construction or Facility Rehabilitation Needs Estimate. – The second part of the capital improvement needs estimates shall include only proposals for real property acquisition and projects involving construction of new facilities or rehabilitation of existing facilities to accommodate uses for which the existing facilities were not originally designed. Each project included in this part shall be justified by reference to the needs evaluation criteria established by the Office of State Budget and Management pursuant to G.S. 143C-8-3.

For capital projects of The University of North Carolina and its constituent institutions, the Office of State Budget and Management shall utilize the needs evaluation information approved by the Board of Governors of The University of North Carolina developed pursuant to G.S. 116-11(9).

"§ 143C-8-5. Six-year capital improvements plan.

(a) General. – The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143C-8-4. The plan shall be prepared in two parts.

(b) Repair and Renovations Requirements. – The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, should be met within each year of the six-year planning period to protect and preserve existing capital improvement facilities. The plan shall identify individual projects in priority order by State agency and shall specify the means of financing.

(c) Real Property Acquisition, New Construction, or Facility Rehabilitations. – The second part of the capital improvement plan shall set forth an integrated schedule for real property acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. The plan shall contain for each project (i) estimates of real property acquisition, and construction or rehabilitation costs (ii) a means of financing the project, and (iii) an estimated schedule for the completion of the project. Where the means of financing would involve direct or indirect debt service obligations, a schedule of those obligations shall be presented.

"§ 143C-8-6. Recommendations for capital improvements set forth in the Recommended State Budget.

(a) Budget Director's Recommendations. – The Director of the Budget shall recommend expenditures for repairs and renovations of existing facilities, and real property acquisition, new construction, or rehabilitation of existing facilities in the Recommended State Budget in accordance with G.S. 143C-3-5.

(b) Repairs and Renovations in the Recommended State Budget. – The Recommended State Budget shall contain for repairs and renovations of existing facilities: (i) the amount recommended for each State agency, (ii) a summary of the recommendations by project type, and (iii) the means of financing.

(c) Repairs and Renovations in the Budget Support Document. – The Budget Support Document shall contain for each repair and renovation project recommended in accordance with 143C-8-6(b): (i) a project description and justification, (ii) a detailed cost estimate, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, and (v) an explanation of the means of financing.

(d) Other Capital Projects in the Recommended State Budget. – The Recommended State Budget shall contain for each capital project involving real property acquisition, new construction, building area (sq. ft.) expansions, or the rehabilitation of existing facilities to accommodate new or expanded uses: (i) a project description and statement of need, (ii) an estimate of acquisition and construction or rehabilitation costs, and (iii) a means of financing the project.

(e) Other Capital Projects in the Budget Support Document. – The Budget Support Document shall contain for each capital project recommended in accordance with 143C-8-6(c): (i) a detailed project description and justification, (ii) a detailed estimate of acquisition, planning, design, site development, construction, contingency and other related costs, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, (v) an estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation, (vi) an estimate of revenues, if any, likely to be derived from the project, covering the first five years of operation, and (vii) an explanation of the means of financing.

"§ 143C-8-7. When a State agency may begin a capital improvement project.

No State agency may expend funds for the construction or renovation of any capital improvement project except as needed to comply with this Article or otherwise authorized by the General Assembly. 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 agency or institution may be utilized for advanced planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget.

"§ 143C-8-8. When a State agency may increase the cost of a capital improvement project.

Upon the request of the administration of a State agency, 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.

"§ 143C-8-9. When a State agency may change the scope of a capital improvement project.

A State agency may increase the scope of a capital improvement project only if the General Assembly authorizes the increase. A State agency may decrease the scope of a capital improvement project if the Director authorizes the decrease. To obtain the Director's authorization for a decrease in the scope of a capital improvement project, a State agency shall submit its request to the Director in writing and shall state the reason for the request.

"§ 143C-8-10. Project Reserve Account.

(a) Project Reserve Account. – The Project Reserve Account is created as a reserve account within the Capital Project Fund. When a construction contract is entered for a capital improvement project for which the General Assembly has enacted an appropriation, the appropriation is encumbered for the project's costs of real property acquisition, planning, design, site development, construction, contingencies, and other related costs. If the amount appropriated for the project exceeds the amount encumbered, the excess shall be credited to the Project Reserve Account, unless otherwise required by law. The Director may authorize funds in the Account to be used for any of the following:

- (1) An emergency repair and renovation project at a State facility.
- (2) The award of a project contract when bids for the contract exceed the amount appropriated for it if the project was designed within the scope intended by the appropriation and if the Director finds that all means to award the contract within the appropriation were reasonably attempted.
- (3) A reversion to the principal fund from which revenue was appropriated for a project when the amount encumbered for the project is less than the amount appropriated.

(b) Reporting Requirement. – Whenever the Director authorizes the use of funds from the Project Reserve Account, the Director shall report the action to the Joint Legislative Commission on Governmental Operations at its next meeting.

"§ 143C-8-11. Reversion of appropriation and lapse of project authorization.

(a) Reversion of Appropriation. – A State agency shall begin the planning of or the construction of an authorized capital improvement project during the fiscal year in which the funds are appropriated. If it does not, the Director may credit the appropriation to the Project Reserve Account, unless otherwise required by law. If the Director does not credit the appropriation to the Project Reserve Account, the appropriation shall revert to the principal fund from which it was appropriated. The Director may, for good cause, allow a State agency to take up to an additional 12 months to take the actions required by this subsection.

(b) Lapse of Project Authorization. – Authorizations for capital improvement projects shall lapse if any of the following occur: (i) the appropriation for a capital improvement project reverts, (ii) the construction of a project does not begin during the first two fiscal years in which funds are appropriated, or (iii) the Director redirects funds appropriated for a capital improvement project in accordance with G.S. 143C-6-2. The Director may, for good cause, allow a State agency to take up to an additional 12 months to begin construction of a project; however, if the Director approves an extension of time under this subsection and construction of the project has not begun by the end of the extension, the authorization for the project shall lapse.

"§ 143C-8-12. University system capital improvement projects from sources that are not General Fund sources: approval of new project or change in scope of existing project.

Notwithstanding any other provision of this Chapter, the Director of the Budget may, upon request of the Board of Governors of The University of North Carolina and after consultation with the Joint Legislative Commission on Governmental Operations, approve: (i) expenditures to plan a capital improvement project of The University of North Carolina the planning for which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital improvement project of The University of North Carolina that is to be funded entirely with non-General Fund money, or (iii) a change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money.

"Article 9.

"Special Funds and Fee Reports.

"§ 143C-9-1. Medicaid Special Fund; transfers to Department of Health and Human Services.

(a) Political subdivisions may appropriate funds directly to the Department of Health and Human Services for Medicaid programs. Other public agencies and private sources may transfer funds to the Department for Medicaid programs. The Department may accept unconditional and unrestricted donations of such funds. Notwithstanding the provisions of this Article which might forbid such transfer or donation, the University of North Carolina Hospitals at Chapel Hill may transfer funds as provided by the previous sentence of this section.

(b) Contributed funds shall be subject to the Department of Health and Human Services administrative control and shall be allocated only as specifically provided in the Current Operations Appropriations Act, except such contributions shall not reduce State general revenue funding. At the end of any fiscal year, the unobligated balance of any such funds shall not revert to the General Fund, but shall be reappropriated for these purposes in the next fiscal year.

"§ 143C-9-2. Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.

(a) The Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs is established as an interest-bearing, nonreverting special trust fund in the Office of State Budget and Management. Moneys in the Trust Fund shall be held in trust and used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the State. The Trust Fund shall be used to supplement and not to supplant or replace existing State and local funding available to meet the mental health, developmental disabilities, and substance abuse services needs of the State.

The State Treasurer shall hold the Trust Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Trust Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Trust Fund shall become part of the Trust Fund. Any balance remaining in the Trust Fund at the end of any fiscal year shall be carried forward in the Trust Fund for the next succeeding fiscal year.

Moneys in the Trust Fund shall be expended only in accordance with subsection (b) of this section and in accordance with limitations and directions enacted by the General Assembly.

(b) Moneys in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs shall be used only to:

- (1) Provide start-up funds and operating support for programs and services that provide more appropriate and cost-effective community treatment alternatives for individuals currently residing in the State's mental health, developmental disabilities, and substance abuse services institutions.
- (2) Facilitate the State's compliance with the United States Supreme Court decision in Olmstead v. L.C. and E.W.
- (3) Facilitate reform of the mental health, developmental disabilities, and substance abuse services system and expand and enhance treatment and prevention services in these program areas to remove waiting lists and provide appropriate and safe services for clients.
- (4) Provide bridge funding to maintain appropriate client services during transitional periods as a result of facility closings, including departmental restructuring of services.
- (5) Construct, repair, and renovate State mental health, developmental disabilities, and substance abuse services facilities.

(c) Notwithstanding G.S. 143C-1-2, any nonrecurring savings in State appropriations realized from the closure of any State psychiatric hospitals that are in excess of the cost of operating and maintaining a new State psychiatric hospital shall not revert to the General Fund but shall be placed in the Trust Fund and shall be used for the purposes authorized in this section. Notwithstanding G.S. 143C-1-2, recurring savings realized from the closure of any State psychiatric hospitals shall not revert to the General Fund but shall be credited to the Department of Health and Human Services to be used only for the purposes of subsections (b)(2) and (b)(3) of this section.

"§ 143C-9-3. Settlement Reserve Fund.

(a) The "Settlement Reserve Fund" is established as a restricted reserve in the General Fund. Except as otherwise provided in this section, funds shall be expended

from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) A Health Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L. 1999-2 shall be credited to the Health Trust Account. The State Controller shall transfer all funds in the Health Trust Account to the Health and Wellness Trust Fund created in Article 6C of Chapter 147 of the General Statutes.

(c) A Tobacco Trust Account is established in the Settlement Reserve Fund. The portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L. 1999-2 shall be credited to the Tobacco Trust Account. The State Controller shall transfer all funds in the Tobacco Trust Account to the Tobacco Trust Fund created in Article 75 of Chapter 143 of the General Statutes.

(d) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund.

"§143C-9-4. Annual Fee Report.

The Office of State Budget and Management shall prepare a report annually on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

"Article 10.

"Penalties.

"§ 143C-10-1. Offenses for violation of Chapter.

(a) Class 1 misdemeanor. – It is a Class 1 misdemeanor for a person to knowingly and willfully do any one or more of the following:

- (1) Withdraw funds from the State treasury for any purpose not authorized by an act of appropriation.
- (2) Approve any fraudulent, erroneous, or otherwise invalid claim or bill to be paid from an appropriation.
- (3) Make a written statement, give a certificate, issue a report, or utter a document required by this Chapter, any portion of which is false.
- (4) Fail or refuse to perform a duty imposed by this Chapter.

(b) Class A1 misdemeanor. – It is a Class A1 misdemeanor for a person to make a false statement in violation of G.S. 143C-6-14(c).

(c) Forfeiture of Office or Employment. – An appointed officer or employee of the State or an officer or employee of a political subdivision of the State, whether elected or appointed, forfeits his office or employment upon conviction of an offense under this section. An elected officer of the State is subject to impeachment for committing any of the offenses specified in this section.

"§ 143C-10-2. Civil liability for violation of Chapter.

A person convicted of an offense under G.S. 143C-10-1 is liable in a civil action for any damages suffered by the State in consequence of the offense.

"§ 143C-10-3. Suspension from office or impeachment for refusal to comply with Chapter.

(a) State Officer or Employee. – The Governor may suspend from the performance of his or her duties any State officer or employee, except an officer elected by the people, who persists, after notice and warning, in failing or refusing to comply with the provisions of this Chapter or any lawful administrative directive issued pursuant to this Chapter. Before acting to suspend, the Governor shall give the accused notice and an opportunity to be heard in his or her own defense. The Governor shall report the facts leading to suspension to the Attorney General who may initiate appropriate criminal or civil proceedings. The Governor may apply to the General Court of Justice for a restraining order and injunction if a suspended officer or employee persists in performing official acts.

(b) Elected Officers. – A State officer elected by the people who knowingly and willfully fails or refuses to comply with any provision of this Chapter or any lawful administrative directive issued under this Chapter is subject to impeachment."

SECTION 4. Part 2A of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-30.3A. Availability of excess receipts.

Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget. Notwithstanding the provisions of Chapter 143C of the General Statutes, receipts within The University of North Carolina Health Care System realized in excess of budgeted levels shall be available above budgeted levels, for each Budget Code, in addition to appropriations to support the operations generating the receipts as approved by the Director of the Budget."

SECTION 4.1. G.S. 116-40.22(c) reads as rewritten:

"(c) Tuition and Fees. – Notwithstanding any provision in Chapter 116 of the General Statutes to the contrary, in addition to any tuition and fees set by the Board of Governors pursuant to G.S. 116-11(7), the Board of Trustees of the institution may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs at that institution without regard to whether an emergency situation exists and not inconsistent with the actions of the General Assembly. ~~The institution shall retain any~~ Any tuition and fees set pursuant to this subsection are appropriated for use by the institution. Notwithstanding this subsection, neither the Board of Governors of The University of North Carolina nor its Board of Trustees shall impose any tuition or mandatory fee at the North Carolina School of Science and Mathematics without the approval of the General Assembly."

SECTION 5.(a) G.S. 143-15.3B is recodified as G.S. 113A-253.1.

SECTION 5.(b) G.S. 113A-253.1 as recodified by this section reads as rewritten:

"§ 113A-253.1. The Clean Water Management Trust Fund. Fund: appropriation.

(a) ~~The Clean Water Management Trust Fund is established in G.S. 113A-253.~~ The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars (\$100,000,000) each calendar year to the Clean Water Management

Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars (\$100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with ~~Article 18 of Chapter 113A of the General Statutes~~ this Article."

SECTION 6. G.S. 143-27.2 is recodified as G.S. 126-8.5.

SECTION 7. G.S. 143-31.2 is recodified as G.S. 143B-53.1.

SECTION 8. G.S. 143B-426.39 reads as rewritten:

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

The State Controller shall:

- (1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards.
- (2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.
- (3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.
- (4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.
- (4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.
- (5) Prescribe the manner in which disbursements of the State agencies shall be ~~made, in accordance with G.S. 143-3.~~ made and may require that warrants, vouchers, electronic payments, or checks, except those

drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller.

- (6) Operate a central payroll system, in accordance with ~~G.S. 143-3.2 and 143-34.1.~~G.S. 143B-426.39B and G.S. 143C-6-6.
- (7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, ~~in accordance with G.S. 143-20.~~agency.
- (8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.
- (9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.
- (9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.
- (10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.
- (11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.
- (12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with ~~G.S. 143-20.1.~~G.S. 143B-426.39C. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.
- (13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the ~~Executive Budget Act, Chapter 143, Article 1 of the General Statutes.~~State Budget Act, Chapter 143C of the General Statutes.
- (14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3."

SECTION 9. Chapter 143B of the General Statutes is amended by adding the following new parts to read:

"Part 28B. Assignment of Claims Against the State.

"§ 143B-426.39A. Assignments of claims against State.

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

- (1) Assignment. An assignment or transfer of a claim, or a power of attorney, an order, or another authority for receiving payment of a claim.
- (2) Claim. A claim, a part or a share of a claim, or an interest in a claim, whether absolute or conditional.
- (3) Qualified charitable organization. A charitable organization that is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.
- (4) State employee credit union. A credit union organized under Chapter 54 of the General Statutes whose membership is at least one-half employees of the State.
- (5) The State. The State of North Carolina and any department, bureau, or institution of the State of North Carolina.

(b) Assignments Prohibited. – Except as otherwise provided in this section, any assignment of a claim against the State is void, regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for payment of the claim. Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State.

(c) Assignments in Favor of Certain Entities Allowed. – This section does not apply to an assignment in favor of:

- (1) A hospital.
- (2) A building and loan association.
- (3) A uniform rental firm in order to allow an employee of the Department of Transportation to rent uniforms that include Day-Glo orange shirts or vests as required by federal and State law.
- (4) An insurance company for medical, hospital, disability, or life insurance.

(d) Assignments to Meet Child Support Obligations Allowed. – This section does not apply to assignments made to meet child support obligations pursuant to G.S. 110-136.1.

(e) Assignments for Prepaid Legal Services Allowed. – This section does not apply to an assignment for payment for prepaid legal services.

(f) Payroll Deduction for State Employees' Credit Union Accounts Allowed. – An employee of the State who is a member of a State employee credit union may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit to any credit union accounts, purchase of any credit union shares, or payment of any credit union obligations agreed to by the employee and the State Employees' Credit Union.

(f1) Payroll Deduction for Contributions to the Parental Savings Fund Allowed. – An employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum for deposit in the Parental Savings Trust Fund administered by the State Education Assistance Authority.

(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. – An employee of the State or any of its 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 of whom are employees 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.

(h) Payroll Deduction for State Employees Combined Campaign Allowed. – Subject to rules adopted by the State Controller, an employee of the State may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the State of a designated lump sum to be paid to satisfy the employee's pledge to the State Employees Combined Campaign.

(i) Payroll Deduction for Public School and Community College Employees' Contributions to Charitable Organizations Allowed. – Subject to rules adopted by the State Controller, an employee of a local board of education or community college may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the board of education or community college of a designated lump sum to be contributed to a qualified charitable organization that has first been approved by the employee's board of education or community college board.

(j) Payroll Deduction for University of North Carolina System Employees' Contributions to Certain Charitable Organizations Allowed. – Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution of a designated lump sum to be contributed to a qualified charitable organization that exists to support athletic or charitable programs of the constituent institution and that has first been approved by the President of The University of North Carolina as existing to support athletic or charitable programs. If a payroll deduction plan under this subsection results in additional costs to a constituent institution, these costs shall be paid by the qualified charitable organizations receiving contributions under the plan.

(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. – Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert

series, and access to other institutionally hosted or provided entertainments, events, and facilities.

(l) Assignment of Payments From the Underground Storage Tank Cleanup Funds. – This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D.

"Part 28C. Accounting Systems.

"§ 143B-426.39B. Issuance of warrants upon State Treasurer; delivery of warrants and disbursements for non-State entities.

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts. All warrants issued for non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer.

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 make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All disbursements made to non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars (\$15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous nontax revenue account by the agency.

"§ 143B-426.39C. Annual financial information.

Every fiscal year, all State agencies and component units of the State, as defined by generally accepted accounting principles, shall prepare annual financial information on all funds administered by them no later than 60 days after the end of the State's fiscal year then ended in accordance with generally accepted accounting principles as described in authoritative pronouncements and interpreted or prescribed by the State Controller, and in the form and time frame required by the State Controller. The State Controller shall publish guidelines specifying the procedures to implement the

necessary records, procedures, and accounting systems to reflect these statements on the proper basis of accounting.

Accordingly, the State Controller shall combine the financial information for the various agencies into a Comprehensive Annual Financial Report for the State of North Carolina in accordance with generally accepted accounting principles. These statements, along with the opinion of the State Auditor, shall be published as the official financial statements of the State and shall be distributed to the Governor, the Office of State Budget and Management, members of the General Assembly, heads of departments, agencies, and institutions of the State, and other interested parties. The State Controller shall notify the Director of the Budget of any State agencies and component units of the State, as defined by generally accepted accounting principles, that have not complied fully with the requirements of this section within the specified time, and the Director of the Budget shall employ whatever means necessary, including the withholding of allotments, to ensure immediate corrective actions."

SECTION 10. G.S. 7A-38.6(i) reads as rewritten:

"(i) The provisions of ~~G.S. 143-31.4~~ G.S. 143C-4-5 do not apply to community mediation centers receiving State funds."

SECTION 11. G.S. 7A-775(a) reads as rewritten:

"(a) Each sentencing services program shall establish a sentencing services board to provide direction and assistance to the sentencing services program in the implementation and evaluation of the plan. Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

- (1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);
- (1a) Development of an annual budget for the program;
- (2) Hiring, firing, and evaluation of program personnel;
- (3) Selection of board members;
- (4) Arranging for an annual financial audit, ~~audit, in accordance with G.S. 143-6.1;~~
- (5) Development of procedures for contracting for services."

SECTION 12. G.S. 17D-4(l) reads as rewritten:

"(l) All moneys received pursuant to this section shall be State funds as defined in ~~G.S. 143-1~~, G.S. 143C-1-1."

SECTION 13. G.S. 18B-208 reads as rewritten:

"§ 18B-208. ABC Commission bonds and funds.

(a) Issuance of Bonds. – As a means of raising the funds needed from time to time in the design, acquisition, construction, equipping, maintenance and operation of a warehouse under G.S. 18B-204(a)(3), the Commission may, with the approval of the ~~Governor after receiving the advice of the Advisory Budget Commission, Governor,~~ at one time or from time to time issue negotiable revenue bonds of the Commission. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation or to make any appropriation for their payment. Revenue bonds issued pursuant to this subsection shall be repaid from the

bailment surcharge as provided in subsection (b). These bonds and the income from them are exempt from all taxation within the State.

(b) Special Fund. – A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the ~~Executive Budget Act~~State Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. Upon payment of the bonds issued pursuant to this section, the Commission shall reduce the bailment surcharge to an amount no greater than necessary to pay operating expenses of the Commission as authorized by the General Assembly.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law."

SECTION 14. G.S. 20-79.5 reads as rewritten:

"§ 20-79.5. Special registration plates for elected and appointed State government officials.

(a) Plates. – The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representatives	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22

Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	24-29
State Budget Officer	30
State Personnel Director	31
~~Advisory Budget Commission Nonlegislative Member~~	~~32-41~~
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200

(b) Designation. – When the table in subsection (a) designates a range of numbers for certain officials, the number given an official in that group shall be assigned. The Governor shall assign a number for members of the Governor's staff, ~~nonlegislative members of the Advisory Budget Commission~~, nonlegislative members of the Board of Economic Development, nonlegislative members of the State Ports Authority, members of State boards and commissions, and for State employees. The Attorney General shall assign a number for the Attorney General's deputies and assistants.

The first number assigned to the Alcoholic Beverage Control Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Alcoholic Beverage Control Commission members on the basis of seniority. The first number assigned to the Utilities Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Utilities Commission members on the basis of seniority. The first number assigned to the Parole Commission is reserved for the Chair of that Commission. The remaining numbers shall be assigned to the Parole Commission members on the basis of seniority."

SECTION 15. G.S. 20-189 reads as rewritten:

"§ 20-189. Patrolmen assigned to Governor's office.

The Secretary of Crime Control and Public Safety, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor. ~~Prior to taking any action under the previous sentence, the Governor may consult with the Advisory Budget Commission."~~

SECTION 16. G.S. 53-92(b) reads as rewritten:

"(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 19 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers, 11 persons selected primarily as representatives of the borrowing public, and two chief executive officers of State savings institutions. The person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent ($1/2$ of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as ~~compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission.~~ subistence and travel expenses at the rates set forth in G.S. 120-3.1. ~~This compensation.~~ The subsistence and travel expenses shall be paid from the fees collected from the examination of banks as provided by law."

SECTION 17. G.S. 53-245(b) reads as rewritten:

"(b) Scope. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this Article. In addition, ~~G.S. 143-3.3~~ G.S. 143B-426.39A prohibits refund anticipation loans repaid from refunds of North Carolina tax."

SECTION 18. G.S. 62-302 reads as rewritten:**"§ 62-302. Regulatory fee.**

(a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this

section. The fees collected shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

It is also the policy of the State to provide limited oversight of certain electric membership corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as provided in this section.

(b) Public Utility Rate. –

- (1) Repealed by Session Laws 2000-140, s. 56, effective July 21, 2000.
- (2) The public utility regulatory fee for each fiscal year shall be the greater of (i) a percentage rate, established by the General Assembly, of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the public utility regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to ~~G.S. 143-11.~~ G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the public utility regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

- (3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary public utility regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the public utility regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).
- (4) As used in this section, the term "North Carolina jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

(b1) Electric Membership Corporation Rate. – The electric membership corporation regulatory fee for each fiscal year shall be a dollar amount as established by the General Assembly by law.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose the amount of the electric membership corporation regulatory fee. For fiscal years beginning in an odd-numbered year, the proposed amount shall be included in the budget message the Governor submits to the General Assembly pursuant to ~~G.S. 143-11~~, G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, the proposed amount shall be included in a special budget message the Governor shall submit to the General Assembly.

The amount of the electric membership corporation regulatory fee proposed by the Commission may not exceed the amount necessary to defray the estimated cost of the operations of the Commission and the Public Staff for the regulation of the electric membership corporations in the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of the Commission and the Public Staff for the regulation of the electric membership corporations for the upcoming fiscal year.

(c) When Due. – The electric membership corporation regulatory fee imposed under this section shall be paid in quarterly installments. The fee is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter.

The public utility regulatory fee imposed under this section is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Every public utility subject to the public utility regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Commission may by rule require. Receipts shall be reported on an accrual basis.

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of twenty-five dollars (\$25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00). If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(d) Use of Proceeds. – A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the ~~Executive Budget Act~~ State Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by this

Chapter and in regulating electric membership corporations as provided in G.S. 117-18.1.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 19. G.S. 62A-22(d) reads as rewritten:

"(d) Consistent with the provisions of ~~G.S. 143-3.2,~~ G.S. 143B-426.39B, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62A-25. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62A-22(a)."

SECTION 20. G.S. 74-24.6 reads as rewritten:

"§ 74-24.6. Advisory Council.

(a) The Commissioner shall appoint an Advisory Council consisting of 11 members to assist him in the development of safety and health standards for mines which are subject to this Article and to advise him on matters relating to safety and health in such mines. Said Advisory Council shall include three members expressly qualified by experience and affiliation to present the viewpoint of operators of such mines, three persons similarly qualified to present the viewpoint of workers in such mines, and five members of the public sector with knowledge of mining operations or associated health and safety aspects thereof. The Commissioner of Labor shall annually designate one member to act as chairman. The members of the Advisory Council shall serve at the pleasure of the Commissioner and shall have no specific term of office.

(b) The Advisory Council shall hold not fewer than two meetings during each calendar year, and said meetings shall be open to the public. The Commissioner shall furnish to the Advisory Council such secretarial, clerical, and other services as he deems necessary to conduct its business.

(c) The members of the Advisory Council shall be compensated for travel expenses and per diem as authorized by the ~~Advisory Budget Commission~~ Commissioner in accordance with those amounts paid to State boards under Chapter 138 of the General Statutes.

(d) The Commissioner may from time to time select representatives of professional organizations of technicians, professional persons specializing in occupational safety and health, and representatives of State agencies who by experience and affiliation are qualified to present the viewpoint of operators of mines and workers in mines to assist the Advisory Council in performing its duties. Such persons, except State employees, selected for temporary purposes may be paid such per diem and travel expenses for attending meetings as may be fixed by the ~~Advisory Budget Commission~~ and recommended by the Commissioner."

SECTION 21. G.S. 95-135(c) reads as rewritten:

"(c) The Commission shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the Commission, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct,

incompetency, the commission of any crime, or for any other good and adequate reason as found by the Commission. The Commission shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the Commission, and its decision shall be final. The compensation of the members of the Commission shall be on a per diem basis and shall be fixed by the Governor. The chairman of the Commission may be paid a higher rate of compensation than the other two members of the Commission. For the purpose of carrying out its duties and functions under this Article, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the Commission. On matters properly before the Commission the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the Commission. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review. ~~Prior to taking any action under this subsection to set compensation, the Governor may consult with the Advisory Budget Commission.~~"

SECTION 22. G.S. 96-5 reads as rewritten:

"§ 96-5. Employment Security Administration Fund.

(a) Special Fund. – There is hereby created in the State treasury a special fund to be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The 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.)~~ State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter. The fund shall consist of all moneys appropriated by this State, all moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this Chapter: Provided, any interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. 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 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 Employment Security Administration Fund shall be deposited in said fund.

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

(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, 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.)~~ State Budget Act (Chapter 143C of the General Statutes) 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.

(c1) The Employment Security Commission shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than April 1 of every year as to how the funds authorized to be used by Session Laws 1995, (Regular Session, 1996), c. 608 were expended.

(d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding, the Commission is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America, in the manner permitted by federal law, such moneys standing to its credit in such fund, as are permitted by federal law to be used for expense of administering this Chapter and to expend such moneys for such purpose, without regard to a determination of necessity by a federal agency. The State Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such moneys shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State treasury.

(e) **Reed Bill Fund Authorization.** – Subject to a specific appropriation by the General Assembly of North Carolina to the Employment Security Commission out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Commission is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the Employment Security Commission, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any such funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund which may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year period which begins on the effective date of the appropriation.

(f) **Employment Security Commission Reserve Fund.** – There is created in the State treasury a special trust fund, separate and apart from all other public moneys or

funds of this State, to be known as the Employment Security Commission Reserve Fund, hereinafter "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve Fund may be used by the Commission for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act, and shall be continuously available to the Commission for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the Commission and in accordance with such regulations as the Commission may prescribe.

Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Security Administration Fund.

The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the "Worker Training Trust Fund". These moneys shall be used to:

- (1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;
- (2) Continue operation of local Employment Security Commission offices throughout the State; or
- (3) Provide refunds to employers.

The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and unencumbered at the end of the fiscal year for which they are appropriated shall revert to the State treasury to the credit of the Worker Training Trust Fund in accordance with ~~G.S. 143-18~~ G.S. 143C-1-2.

(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment Security Commission Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."

SECTION 23. G.S. 96-6 reads as rewritten:

"§ 96-6. Unemployment Insurance Fund.

(a) Establishment and Control. – There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Commission exclusively for the purposes of this Chapter. This fund shall consist of:

- (1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the fund;

- (2) Any property or securities acquired through the use of moneys belonging to the fund;
- (3) All earnings of such property or securities;
- (4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
- (5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a));
- (6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;
- (7) Reimbursement payments in lieu of contributions.

All moneys in the fund shall be commingled and undivided.

(b) Accounts and Deposit. – The State Treasurer shall be ex officio the treasurer and custodian of the fund who shall disburse such fund in accordance with the directions of the Commission and in accordance with such regulations as the Commission shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account,
- (2) An unemployment trust fund account, and
- (3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded immediately to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in ~~G.S. 143-3.2~~ G.S. 143B-426.39B under the requisition of the Commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance 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 unemployment insurance fund shall be deposited in said fund.

(c) Withdrawals. – Moneys shall be requisitioned from this State's account in the unemployment trust fund solely for the payment of benefits (including extended benefits) and in accordance with regulations prescribed by the Commission. The Commission shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the accounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt

thereof the treasurer shall deposit such moneys in the benefit account and shall pay all warrants drawn thereon as provided in ~~G.S. 143-3.2~~ G.S. 143B-426.39B and requisitioned by the Commission for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to approval of the Budget Bureau or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be issued as provided in ~~G.S. 143-3.2~~ G.S. 143B-426.39B as requisitioned by the chairman of the Commission or a duly authorized agent of the Commission for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The provisions of subsections (a), (b), and (c), to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the Unemployment Insurance Fund of this State shall be transferred to the treasurer of the Unemployment Insurance Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this Chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or such investments as are now permitted by law for sinking funds of the State of North Carolina; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the Commission.

(e) Benefits shall be deemed to be due and payable under this Chapter only to the extent provided in this Chapter and to the extent that moneys are available therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums.

(f) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly, from amounts in the Unemployment Insurance Fund."

SECTION 24. G.S. 96-6.1(b) reads as rewritten:

"(b) Training and Employment Account. – There is created in the State treasury a special account separate and apart from all other public moneys or funds of this State, to be known as the Employment Security Commission Training and Employment Account. The State Treasurer is ex officio the treasurer and custodian of the Account

and shall invest its funds in accordance with law. Any interest or other income derived from the Account shall be credited to the Account. Funds in the Account may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Account is subject to the provisions of the ~~Executive Budget Act~~, State Budget Act, except that no unexpended surplus of the Account shall revert to the General Fund. Funds appropriated from the Account that are unexpended and unencumbered at the end of the fiscal year for which they were appropriated shall revert to the credit of the Account in the State treasury in accordance with ~~G.S. 143-18~~, G.S. 143C-1-2.

It is the intent of the General Assembly that eighty percent (80%) of the funds in the Account shall be appropriated annually to the Department of Community Colleges to be used for nonrecurring expenditures to provide worker training through improved continuing education, acquisition of modern training equipment, operation of specialized training centers, enhancement of small business center training, expansion of training for new and expanding industries, incentive grants for incumbent worker training, programs funded by the Worker Training Trust Fund, and other programs of the Department of Community Colleges. It is the intent of the General Assembly that twenty percent (20%) of the funds in the Account shall be appropriated annually to the Employment Security Commission for administration and collection of the training and reemployment contribution and for nonrecurring expenditures for reemployment services."

SECTION 25. G.S. 106-65.88(g) reads as rewritten:

"(g) For the purposes of the ~~Executive Budget Act~~, ~~G.S. 143-1 et seq.~~, State Budget Act, Chapter 143C of the General Statutes, the assessments collected by the Department under this Article shall not be 'State funds'."

SECTION 26. G.S. 108A-88 reads as rewritten:

"§ 108A-88. Determination of State and county financial participation.

Before February 15 of each year, the Secretary shall notify the county board of commissioners, the county manager, the director of social services, and the director of public health of each county of the amount of State and federal moneys estimated to be available, as best can be determined, to that county for programs of public assistance, social services, public health, and related administrative costs, as well as the percentage of county participation expected to be required for the budget for the succeeding fiscal year. In odd-numbered years, in making such notification, the Secretary shall notify the counties of any changes in funding levels, formulas, or programs relating to public assistance and public health proposed by the Governor to the General Assembly in the proposed budget and budget report submitted under the ~~Executive Budget Act~~, State Budget Act. Counties shall be notified of additional changes in the proposed budget of the Governor ~~and the Advisory Budget Commission~~ that are made by the General Assembly or the United States Congress subsequent to the February 15 estimates."

SECTION 27. G.S. 113-258 reads as rewritten:

"§ 113-258. Commission subject to provisions of ~~Executive Budget Act~~, State Budget Act.

The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the ~~Executive Budget Act~~, ~~Article 1 of Chapter 143~~, State Budget Act, Chapter 143C of the General Statutes of North Carolina."

SECTION 28. G.S. 113-315.31(a) reads as rewritten:

"(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue with the approval of the Governor negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities. ~~Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission.~~"

SECTION 29. G.S. 113A-193(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources shall:

- (1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;
- (2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;
- (3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the ~~Advisory Budget Commission and the~~ General Assembly;
- (4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.
- (5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report."

SECTION 30. G.S. 115C-12(1a) 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:

...

- (1a) To Submit a Budget Request to the Director of the Budget. – The Board shall submit a budget request to the Director of the Budget in accordance with ~~G.S. 143-6.~~ G.S. 143C-3-3. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance."

SECTION 31. G.S. 115C-106(a) reads as rewritten:

"(a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this section and in G.S. 115C-122 shall be excluded from service or education for any reason whatsoever. This policy shall be the practice of the

State for children from birth through age 21 and the State requires compliance by all local education agencies and local school administrative units, all local human services agencies including, but not limited to, local health departments, local social service departments, community mental health centers and all State departments, agencies, institutions except institutions of higher education, and private providers which are recipients of general funds as these funds are defined in ~~G.S. 143-1~~G.S. 143C-1-1."

SECTION 32. G.S. 115C-243(f) reads as rewritten:

"(f) Before any agreement under this section may be signed, the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. ~~Prior to taking any action under this subsection, the State Board of Education may consult with the Advisory Budget Commission.~~"

SECTION 33. G.S. 115C-290.5 reads as rewritten:

"§ 115C-290.5. Powers and duties of the Board; development of the North Carolina Public School Administrator Exam.

(a) The State Board of Education shall administer this Article. In fulfilling this duty, the Board shall:

- (1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam.
- (2) Establish and collect an application fee not to exceed fifty dollars (\$50.00). Fees collected under this Article shall be credited to the General Fund as nontax revenue.
- (3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.
- (4) Repealed by Session Laws 2001-424, s. 28.25(d).
- (5) Maintain accounts and records in accordance with the ~~Executive Budget Act, Article 1 of Chapter 143 of the General Statutes~~State Budget Act, Chapter 143C of the General Statutes.
- (6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
- (7) Repealed by Session Laws 2001-424, s. 28.25(d).

(b), (c) Repealed by Session Laws 2001-424, s. 28.25(d)."

SECTION 34. G.S. 115C-423 reads as rewritten:

"§ 115C-423. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (1) "Budget" is a plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year.
- (2) "Budget resolution" is a resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year.
- (3) "Budget year" is the fiscal year for which a budget is proposed and a budget resolution is adopted.

- (4) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.
- (5) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions or limitations.
- (6) "Vending facilities" has the same meaning as it does in ~~G.S. 143-12.1.~~ G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means."

SECTION 35. G.S. 115D-2 reads as rewritten:

"§ 115D-2. Definitions.

As used in this Chapter:

- (1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.
- (2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the service area which it serves, and may offer
 - a. The freshmen and sophomore courses of a college of arts and sciences, authorized by G.S. 115D-4.1;
 - b. Organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
 - c. Vocational, trade, and technical specialty courses and programs, and
 - d. Courses in general adult education.
- (3) The term "institution" refers to any institution established pursuant to this Chapter except for the North Carolina Center for Applied Textile Technology.
- (4) The term "regional institution" means an institution whose service area as assigned by the State Board of Community Colleges includes three or more counties; provided, however, any institution receiving funds as a regional institution on May 1, 1987, shall continue to receive funds on that basis.
- (5) The term "State Board" refers to the State Board of Community Colleges.
- (6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.
- (7) Repealed by Session Laws 1987, c. 564, s. 1.
- (8) "Vending facilities" has the same meaning as it does in ~~G.S. 143-12.1.~~ G.S. 111-42(d), but also means any mechanical or electronic device

dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means."

SECTION 36. G.S. 115D-4 reads as rewritten:

"§ 115D-4. Establishment of institutions; capital improvements.

The establishment of all community colleges shall be subject to the approval of the General Assembly upon recommendation of the State Board of Community Colleges. In no case, however, shall favorable recommendation be made by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The expenditures of any State funds for any capital improvements of existing institutions shall be subject to the prior approval of the State Board of Community Colleges and the Governor, ~~provided that the Governor may consult with the Advisory Budget Commission before giving approval.~~ Governor. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the ~~Executive Budget Act~~ State Budget Act unless specifically otherwise provided in this Chapter."

SECTION 37. G.S. 115D-5(f) reads as rewritten:

"(f) **(See editor's note)** A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Joint Legislative Commission on Governmental Operations, ~~and the Advisory Budget Commission.~~ Operations, on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved."

SECTION 38. G.S. 115D-31(a) reads as rewritten:

"(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

- (1) Plant Fund. – Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining

amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or ~~G.S. 143-31.4~~, G.S. 143C-4-5, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

- (2) Current Operating Expenses:
 - a. General administration. – Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.
 - b. Instructional services. – Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.
 - c. Support services. – Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.
- (3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). – Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census."

SECTION 39. G.S. 116-2 reads as rewritten:

"§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

- (1) "Board" means the Board of Governors of the University of North Carolina.
- (2) "Board of trustees" means the board of trustees of a constituent institution.
- (3) "Chancellor" means the chancellor of a constituent institution.
- (4) "Constituent institution" or "institution" means one of the 16 public institutions of higher education, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University, and the constituent high school, the North Carolina School of Science and Mathematics.
- (5) "President" means the President of the University of North Carolina.
- (6) "Vending facilities" has the same meaning as it does in ~~G.S. 143-12.1~~ G.S. 111-42(d), but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means."

SECTION 40. G.S. 116-11 reads as rewritten:

"§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

- (1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Community Colleges System Office and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, ~~the Advisory Budget Commission~~ and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

- (2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.
- (3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.
- (4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.
- (5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.
- (5a) [Expired.]
- (5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.
- (6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

- (7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.
- (8) The Board shall set enrollment levels of the constituent institutions.
- (8a) The Board of Governors, after consultation with representatives from nonpublic schools, including representatives of nonpublic schools operated under Parts 1 and 3 of Article 39 of Chapter 115C of the General Statutes, and after taking into consideration comments received from the Joint Legislative Education Oversight Committee, shall adopt a policy regarding uniform admissions requirements for applicants from nonpublic schools lawfully operated under Article 39 of Chapter 115C of the General Statutes. The policy shall not arbitrarily differentiate between applicants based upon whether the applicant attended a public or a lawfully operated nonpublic school.
- (9) a. The Board of Governors shall develop, prepare and present to the ~~Governor, the Advisory Budget Commission~~ Governor and the General Assembly a single, unified recommended budget for all of ~~public senior higher education, the constituent institutions of The University of North Carolina.~~ The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. ~~The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.~~ The president may present to the General Assembly an updated estimate of tuition, fees, and other receipts by June 15 of each year to be included in the budget for the following fiscal year.
 - b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided,

nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category. ~~Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.~~

- c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions. ~~Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.~~
- d. Repealed by Session Laws 1987, c. 795, s. 27.
- (10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Community Colleges System Office and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.
- (10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, "institutions of higher education" shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:
 - a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;
 - b. College performance of high school graduates for the year immediately following high school graduation including each student's: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;
 - c. The progress of students from one institution of higher education to another; and
 - d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including

course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

- (10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.
- (11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.
- (12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, ~~the Advisory Budget Commission~~ and the boards of trustees of the institutions.
- (12a) Notwithstanding any other law, 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 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.
- (12b) The Board of Governors of The University of North Carolina shall designate the UNC programs that will comprise the UNC Center for School Leadership Development. The Board of Governors shall submit to the Governor and the General Assembly a single, unified recommended budget for the continued operation and expansion of the programs in the Center for School Leadership Development.
- (13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears

necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to the President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

- (14) The Board shall possess all powers not specifically given to institutional boards of trustees."

SECTION 41. G.S. 116-14(b1) reads as rewritten:

"(b1) The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to ~~Budget Code 16010~~ Budget Code 16011 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from ~~Budget Code 16010~~ Budget Code 16011 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from ~~Budget Code 16010~~, Budget Code 16011, and the capital improvement projects may be established following the procedures set out in ~~G.S. 143-18.1~~ G.S. 143C-8-8 and G.S. 143C-8-9."

SECTION 42. G.S. 116-30.2 reads as rewritten:

"§ 116-30.2. Appropriations to special responsibility constituent institutions."

(a) All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding ~~G.S. 143-23(a1)~~, ~~G.S. 143-23(a2)~~, G.S. 143C-6-4 and G.S. 120-76(8), each special responsibility constituent institution may expend monies from the overhead receipts special fund budget code and the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. Special responsibility constituent institutions may transfer appropriations between budget codes. These transfers shall be considered certified even if as a result of agreements between special responsibility constituent institutions. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to ~~G.S. 143-17~~ G.S. 143C-6-3 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions."

SECTION 43. G.S. 116-30.3 reads as rewritten:

"§ 116-30.3. Reversions."

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility

constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and ~~may be used~~ is appropriated for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and ~~may be used~~ is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in ~~G.S. 143-25~~, G.S. 143C-6-2 shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) Repealed by Session Laws 1998-212, s. 11(b).

(c) Repealed by Session Laws 1998-212, s. 11(a).

(d) Repealed by Session Laws 1998-212, s. 11(b).

(e) Notwithstanding ~~G.S. 143-18~~, G.S. 143C-1-2 of the General Fund current operations appropriations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina, any amount of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and ~~may be used~~ is appropriated for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this subsection shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in ~~G.S. 143-25~~, G.S. 143C-6-2, shall establish the General Fund current operations credit balance remaining in Budget Code 16010 of the Office of General Administration of The University of North Carolina. The funds shall not be used to support positions."

SECTION 43.1. G.S. 116-35 reads as rewritten:

"§ 116-35. **Electric power plants, campus school, etc.**

Institutions operating electric power plants and distribution systems as of October 30, 1971, are authorized to continue such operation and, after furnishing power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation, or any proceeds derived from the lease or sale, of such power plants and distribution systems are appropriated and shall be paid into the permanent endowment fund held for the institution as provided for in G.S. 116-36. Institutions operating or authorized to operate, as of October 30, 1971, water or sewer distribution systems, may continue to do so. Each of the institutions now operating a campus laboratory or demonstration school may continue to do so under the presently existing plan of operation, consistent with the appropriations made therefor. The provisions of this section shall not apply to the University Enterprises of the University of North Carolina at Chapel Hill, which shall continue to be governed in all respects as provided in Chapters 634 and 723 of the Session Laws of 1971, G.S. 116-41.1 through 116-41.12, and other applicable legislation.

SECTION 44. G.S. 116-36(g) reads as rewritten:

"(g) The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their

credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters ~~143~~ 143, 143C, and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the Budget. ~~Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission.~~"

SECTION 44.1. G.S. 116-36 is amended by adding a new subsection to read:

"(l) The proceeds and funds described by this section are appropriated and may be used only as provided by this section."

SECTION 45. G.S. 116-36.1 reads as rewritten:

"§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the ~~Executive Budget Act~~ State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with ~~G.S. 143-18.1~~ G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor

- designated to be gifts, devises, or bequests to the endowment fund of the institution;
- (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;
 - (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
 - (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
 - (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
 - (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;
 - (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;
 - (8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency;
 - (9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.
 - (10) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g) (7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions."

SECTION 46. G.S. 116-36.2(a) reads as rewritten:

"(a) Notwithstanding Chapter 143C or any provisions of law other than Article 5A of Chapter 147 of the General Statutes, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The special funds of individual institutions regulated by this section are appropriated and may be used only as authorized by this section."

SECTION 46.1. G.S. 116-36.4 reads as rewritten:

"§ 116-36.4. Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds are appropriated and may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law."

SECTION 47. G.S. 116-36.5 reads as rewritten:

"§ 116-36.5. Centennial Campus trust fund; Horace Williams Campus trust fund; Millennial Campuses' trust funds.

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in ~~G.S. 116-36.1.~~ G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in ~~G.S. 116-36.1.~~ G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term "Horace Williams Campus" is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in ~~G.S. 116-36.1.~~ G.S. 116-36.1, and, like the institutional trust funds, is exempt from Chapter 143C, except for Article 8 of Chapter 143C of the General Statutes. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(d) The moneys described by this section are appropriated and may be used only as provided by this section."

SECTION 47.1. G.S. 116-36.6 reads as rewritten:

"§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The 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 are appropriated and shall be allocated as follows:

- (1) The portion of the Medicare reimbursement generated through the effort and expense of the 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."

SECTION 47.2. G.S. 116-37(e) reads as rewritten:

"(e) Finances. – The University of North Carolina Health Care System shall be subject to the provisions of the ~~Executive Budget Act, State Budget Act,~~ except for trust funds as provided in G.S. 116-36.1 and G.S. 116-37.2. The Chief Executive Officer, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. All operating funds of the

University of North Carolina Health Care System may be budgeted and disbursed through special fund codes, maintaining separate auditable accounts for the University of North Carolina Hospitals at Chapel Hill and the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill. All receipts of the University of North Carolina Health Care System may be deposited directly to the special fund codes, and except for General Fund appropriations, all receipts of the University of North Carolina Hospitals at Chapel Hill may be invested pursuant to G.S. 147-69.2(b3). General Fund appropriations for support of the University of North Carolina Hospitals at Chapel Hill shall be budgeted in a General Fund code under a single purpose, "Contribution to University of North Carolina Hospitals at Chapel Hill Operations" and be transferable to a special fund operating code as receipts."

SECTION 48. G.S. 116-41.4 reads as rewritten:

"§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars (\$3,500,000); provided, further, the Board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars (\$3,500,000) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars (\$13,000,000); provided, further, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1975, shall not exceed thirteen million dollars (\$13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity at the option of the Board at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or

private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Part. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in

office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any notes issued under the provisions of this Part, all such notes shall be deemed to be negotiable instruments under the laws of this State. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds.

The resolution providing for the issuance of notes or bonds may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Notes may be issued by the Board under the provisions of this Part, subject to the approval of the Director of the Budget, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bond anticipation notes issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such notes shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the notes.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Part, shall be deemed and construed to include the words "bond anticipation notes."

~~Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."~~

SECTION 49. G.S. 116-41.9 reads as rewritten:

"§ 116-41.9. Refunding revenue bonds.

The University is hereby authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this Part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding revenue bonds for the combined purpose of

- (1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this Part insofar as the same may be applicable.

~~Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission."~~

SECTION 50. 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~~, G.S. 143C-4-5, 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~~, G.S. 143C-4-5 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); 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~~, G.S. 143C-4-5, 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~~, G.S. 143C-4-5, 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); 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 51. G.S. 116-44.4(m) reads as rewritten:

"(m) All moneys received pursuant to this Part shall be placed in a trust account in each constituent ~~institution~~ institution, are appropriated, 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."

SECTION 51.1. G.S. 116-68 reads as rewritten:

"§ 116-68. Endowment fund.

The Board of Trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Article 1, Chapter 116, of the General Statutes. The proceeds in this fund are appropriated as provided by G.S. 116-36."

SECTION 51.2. G.S. 116-74.41 is amended by adding a new subsection to read:

"(a1) All funds appropriated to, or otherwise received by, the Principal Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds shall be placed in an institutional trust fund pursuant to G.S. 116-36.1."

SECTION 52. G.S. 116-175.1 is repealed.

SECTION 53. G.S. 116-187.1 is repealed.

SECTION 54. G.S. 116-209.19 reads as rewritten:

"§ 116-209.19. Grants to students.

The Authority is authorized to make grants to eligible students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Secretary of Administration, after consultation with the Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes and community colleges created and existing under Chapter 115D of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the

current operations budgets, pursuant to the ~~Executive Budget Act~~ State Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Secretary of Administration after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the Pell Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law.

~~Prior to taking any action under this subsection, the Secretary of Administration may consult with the Advisory Budget Commission."~~

SECTION 54.1. Article 26 of Chapter 116 is amended by adding a new section to read:

"§ 116-224. Appropriation.

The funds described by this Article are appropriated and shall be used only as provided by this Article."

SECTION 55. G.S. 116-238(g) reads as rewritten:

"(g) The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters ~~143~~ 143, 143C, and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Director of the ~~Budget after the Director of the Budget consults with the Advisory Budget Commission.~~Budget."

SECTION 55.1. Article 29 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-238.5. Appropriation.

The funds described in G.S. 116-235 and G.S. 116-238 are appropriated and shall be used only as provided by this Article."

SECTION 56. G.S. 116D-11(g) reads as rewritten:

"(g) University Improvement Bonds Fund. – The proceeds of university improvement general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "University Improvement Bonds Fund". Moneys in the University Improvement Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any university improvements authorized by this Article may be placed by the State Treasurer in the University Improvement Bonds Fund or in a

separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of university improvement general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of university improvements, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of university improvement bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for university improvements shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the ~~Executive Budget Act, Article 1 of Chapter 143~~ State Budget Act, Chapter 143C of the General Statutes."

SECTION 57. G.S. 116D-46(g) reads as rewritten:

"(g) Community College Bonds Fund. – The proceeds of community college general obligation bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Community College Bonds Fund". Moneys in the Community College Bonds Fund shall be used for the purposes set forth in this Article.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any community college capital facilities authorized by this Article may be placed by the State Treasurer in the Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

The proceeds of community college general obligation bonds and notes may be used with any other moneys made available by the General Assembly for the making of grants to community colleges for capital facilities, including the proceeds of any other State bond issues, whether previously made available or which may be made available after the effective date of this Article. The proceeds of community college bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this Article for grants to community colleges shall be disbursed for the purposes provided in this Article upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the ~~Executive Budget Act, Article 1 of Chapter 143~~ State Budget Act, Chapter 143C of the General Statutes."

SECTION 58. G.S. 117-3.1 reads as rewritten:

"§ 117-3.1. Regulatory fee.

(a) Fee imposed. – It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected

shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate. – For each fiscal year, the regulatory fee shall be the greater of the following:

- (1) The rate established by the General Assembly for that year for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.
- (2) Four cents (4¢) for each electric membership corporation's North Carolina meter connected for service and for each telephone membership corporation's North Carolina access line connected for service for each quarter of the year.

When the Authority prepares its budget request for the upcoming fiscal year, the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to ~~G.S. 143-11~~. G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. If the General Assembly decides to set the regulatory fee at a rate higher than the rate in subdivision (2) of this subsection, it shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. – The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. – A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the ~~Executive Budget Act~~ State Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter."

SECTION 59. G.S. 120-32(11) reads as rewritten:

"§ 120-32. Commission duties.

The Legislative Services Commission is hereby authorized to:

...

- (11) To specify the uses within the General Assembly budget of funds appropriated to the General Assembly which remain available for expenditure after the end of the biennial fiscal period, and to revert funds under ~~G.S. 143-18~~G.S. 143C-1-2."

SECTION 60. G.S. 120-36.6 reads as rewritten:

"§ 120-36.6. Legislative Fiscal Research staff participation.

~~Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board, Commission, Board or Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board, Commission, Board or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board, Commission, Board or Council.~~"

SECTION 61. 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-seven thousand four hundred two dollars (\$97,402) payable monthly. Each principal clerk shall also receive such additional compensation as approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, 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."

SECTION 62. G.S. 120-76(8) reads as rewritten:

"§ 120-76. Powers and duties of the Commission.

The Commission shall have the following powers:

...

- (8) The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:
 - a. Makes allocations from the Contingency and Emergency Fund.
 - b. Authorizes expenditures in excess of the total requirements of a purpose or program as enacted by the General Assembly and as

provided by ~~G.S. 143-23(a1)(3), except for trust funds as defined in G.S. 116-36.1(g).~~G.S. 143C-6-4.

- c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.
- d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.
- e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures.

Notwithstanding the provisions of this subdivision 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 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."

SECTION 63. G.S. 120-259(b) reads as rewritten:

"(b) The Committee shall have oversight over implementation of the ~~Capital Improvements Planning Act established under Article 1B of Chapter 143 of the General Statutes and shall consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45.~~six-year capital improvements plan developed pursuant to G.S. 143C-8-5."

SECTION 64. G.S. 121-9(f) reads as rewritten:

"(f) Emergency Acquisition Where Funds Not Immediately Available. – If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the

Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of ~~Article 1 of Chapter 143~~ Chapter 143C and G.S. 143B-53.1 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise."

SECTION 65. G.S. 121-12.1 reads as rewritten:

"§ 121-12.1. Grants-in-aid.

Under the concepts of reorganization of State government, responsibility for administering appropriations to the Department of Cultural Resources for grants-in-aid to private nonprofit organizations in the areas of history, art, and culture is hereby assigned to the Department of Cultural Resources. It shall be the responsibility of the Department of Cultural Resources to receive, analyze, and recommend to the ~~Governor, the Advisory Budget Commission, Governor~~ and the General Assembly the disposition of any request for funding received by it from or for any of these organizations, and to disburse under provisions of law any appropriations made to the Department for them. Appropriations to the Department of Cultural Resources for grants-in-aid to assist in the restoration of historic sites owned by private nonprofit organizations shall in addition be expended only in accordance with G.S. 121-11, 121-12 and ~~143-31.2~~. ~~The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.~~ 143B-53.1."

SECTION 66. G.S. 122A-8.1 reads as rewritten:

"§ 122A-8.1. Powers of the State Treasurer.

Notwithstanding any other provisions of this act, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Agency and with the approval of the Local Government Commission.

The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act.

The North Carolina Housing Finance Agency shall determine when a bond issue is indicated. The Agency shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

The State Treasurer shall have the exclusive power to employ and designate the financial consultants, underwriters, and bond attorneys to be associated with the bond issue; provided, at least annually, the Treasurer shall seek the written recommendations of the Housing Finance Agency; and, subsequent to each bond issue, the Treasurer shall conduct a formal performance evaluation of the financial consultants, underwriters and bond attorneys which shall be open to public inspection.

The Director of the Budget shall provide to the State Treasurer the funds necessary to defray the costs incurred in performing the fiscal functions reserved to the Treasurer under this act from the funds allocated to the Agency pursuant to the 1975 Session Laws. ~~Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.~~

Nothing in this act is intended to abrogate or diminish the inherent power of the State Treasurer to negotiate the terms and conditions of the bonds and notes, and to issue the bonds and notes authorized by General Statutes Chapter 122A."

SECTION 67. G.S. 122A-16 reads as rewritten:**"§ 122A-16. Oversight by committees of General Assembly; annual reports.**

The Finance Committee of the House of Representatives and the Finance Committee of the Senate shall exercise continuing oversight of the Agency in order to assure that the Agency is effectively fulfilling its statutory purpose; provided, however, that nothing in this Chapter shall be construed as required by the Agency to receive legislative approval for the exercise of any of the powers granted by this Chapter. The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the Office of State Budget and Management, State Auditor, the aforementioned committees of the General Assembly, ~~the Advisory Budget Commission~~ Assembly and the Local Government Commission. Each such report shall set forth a complete operating and financial statement of the Agency during such year. The Agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. The Agency shall on January 1 and July 1 of each year submit a written report of its activities to the Joint Legislative Commission on Governmental Operations. The Agency shall also at the end of each fiscal year submit a written report of its budget expenditures by line item to the Joint Legislative Commission on Governmental Operations."

SECTION 68. G.S. 122C-185 reads as rewritten:**"§ 122C-185. Application of funds belonging to State facilities.**

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the ~~Executive Budget Act~~ State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with ~~G.S. 143-18.1~~ G.S. 143C-8-8 and G.S. 143C-8-9.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with ~~G.S. 143-12.1~~ the State Budget Act, Chapter 143C of the General Statutes.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77."

SECTION 69. G.S. 126-8.1(c) reads as rewritten:

"(c) The Department of Administration may adopt such rules and regulations as are reasonable and necessary to carry out the provisions of this section, with the approval of the Governor. ~~Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.~~"

SECTION 70. G.S. 130A-470(c) reads as rewritten:

"(c) All fees, funds, and gifts received pursuant to this section shall be subject to audit by the State Auditor and shall be expended in conformity with ~~Article 1 of Chapter 143~~Chapter 143C of the General Statutes."

SECTION 71. G.S. 131A-19 reads as rewritten:**"§ 131A-19. Annual report.**

The Commission shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Chapter for the preceding year to the Governor, the State Auditor, the Secretary of Health and Human Services, the General Assembly, ~~the Advisory Budget Commission~~ and the Local Government Commission. The Commission shall cause an audit of its books and accounts relating to its activities under this Chapter to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Commission."

SECTION 72. G.S. 135-1.1(b) reads as rewritten:

"(b) Notwithstanding any other provision of this Chapter, any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and who is subject to the provisions of the ~~Executive Budget Act, Article 1 of Chapter 143~~State Budget Act, Chapter 143C of the General Statutes, may make an irrevocable election by appropriate resolution of the board, on or before October 1, 2000, to become an employer in the Teachers' and State Employees' Retirement System. Retirement System coverage shall be conditioned on the board's payment of all of the employer's contributions or matching funds from funds of the board and on the board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Any person who is an employee of the board on the date the board makes an irrevocable election to participate in the Retirement System may purchase creditable service for periods of employment with the board prior to the election by making a lump-sum payment equal to the full cost of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the system's liabilities, and shall take into account the additional retirement allowance arising on account of such additional service credit commencing at the earliest age at which a member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

SECTION 73. G.S. 135-8(f) reads as rewritten:

"(f) Collection of Contributions. –

(1) The collection of members' contributions shall be as follows:

- a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the

amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

- (2) The collection of employers' contributions shall be made as follows:
 - a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with ~~Chapter 100, Public Laws of 1929, and amendments thereto (G.S. 143-1 et seq.), known as the Executive Budget Act.~~the State Budget Act, Chapter 143C of the General Statutes.
 - b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (3.16%) for other State employees.
 - c. Repealed by Session Laws 1993, c. 257, s. 13.
 - d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.
 - e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.
- (3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees, the Board shall assess the employer with a penalty of 1% per month with a minimum penalty of twenty-five dollars (\$25.00). If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall

be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default."

SECTION 74. G.S. 136-12(a1) reads as rewritten:

"(a1) The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of ~~G.S. 143-28.1, G.S. 143C-6-11.~~ The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project."

SECTION 75. G.S. 136-28.1 reads as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

"(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is one million two hundred thousand dollars (\$1,200,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and ~~Article 1 of Chapter 143, "The Executive Budget Act."~~ Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and ~~Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."~~ Chapter 143C of the General Statutes, the State Budget Act.

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway

Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) Notwithstanding any other provision of law, the Department of Transportation may solicit proposals under rules and regulations adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of Transportation.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities.

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities."

SECTION 76. G.S. 136-44.37 reads as rewritten:

"§ 136-44.37. Department to provide nonfederal matching share.

The Department of Transportation upon approval by the Board of Transportation and the Director of the Budget may provide for the matching share of federal rail revitalization assistance programs through private resources, county funds or State appropriations as may be provided by the General Assembly. ~~Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission.~~"

SECTION 77. G.S. 136-44.38 reads as rewritten:

"§ 136-44.38. Department to provide State and federal financial assistance to cities and counties for rail revitalization.

(a) The Department of Transportation is authorized to distribute to cities and counties State financial assistance for local rail revitalization programs provided that every rail revitalization project for which State financial assistance would be utilized must be approved by the Board of Transportation and by the Director of the Budget. ~~Prior to taking any action under this section, the Director of the Budget may consult with the Advisory Budget Commission.~~

(b) Repealed by Session Laws 1989, c. 600, s. 4."

SECTION 78. G.S. 136-176(d) reads as rewritten:

"(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of ~~G.S. 143-28.1~~ G.S. 143C-6-11 only for the two bienniums following the year in which the contract is let."

SECTION 79. G.S. 138-4 reads as rewritten:

"§ 138-4. Governor to set salaries of administrative officers; exceptions; longevity pay.

The salaries of all State administrative officers not subject to the State Personnel Act shall be set by the Governor, unless a law provides otherwise.

Whenever by law it is provided that a salary shall be fixed or set by the General Assembly in the Current Operations Appropriations Act, and that office or position is filled by appointment of the Governor, or the appointment is subject to the approval of the Governor, or is made by a commission a majority of whose members are appointed by the Governor, then the Governor may, increase or decrease the salary of a new appointee by a maximum of ten percent (10%) over or under the salary of that position as provided in the Current Operations Appropriations Act, such increased or decreased salary to remain in effect until changed by the General Assembly or until the end of the fiscal year, whichever occurs first. The Governor under this paragraph may not increase the salary of any nonelected official above the level set in the Current Operations Appropriations Act for any member of the Council of State. This section does not apply to any office filled by election by the people, and does not apply to any office in the legislative or judicial branches.

~~Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.~~

Officials whose salaries are covered by the provisions of this section shall be eligible for longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act."

SECTION 80. G.S. 140-9 reads as rewritten:

"§ 140-9. Allocations from Contingency and Emergency Fund; expenditures.

The Governor and Council of State are hereby authorized to allot such sums as they may deem appropriate, from the Contingency and Emergency Fund, to the North Carolina Symphony Society, to aid in carrying on the activities of the said Society. All expenditures made by said Society shall be subject to the provisions of ~~G.S. 143-1 to 143-34, inclusive.~~ the State Budget Act, Chapter 143C of the General Statutes."

SECTION 81. G.S. 140-12 reads as rewritten:

"§ 140-12. Department of Administration authorized to provide space for Art Society.

Subject to the approval of the Governor, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the State Art Society, Incorporated, space in any of the public buildings in Wake County which may be so used without interference with the conduct of the business of the State. ~~Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.~~

SECTION 82. G.S. 143-49 reads as rewritten:

"§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- (1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for

the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

- (2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.
- (3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars (\$100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

- (4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.
- (5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.
- (6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational

- Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. ~~Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.~~
- (6) **(See Editor's note for effective date)** To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. ~~Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.~~
- (7) To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.
- (8) To establish and maintain a procurement card program for use by State agencies, community colleges, nonexempted constituent institutions of The University of North Carolina, and local school administrative units. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with

the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services.

- (8) **(See Editor's note for effective date)** To establish and maintain a procurement card program for use by State agencies, community colleges, and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services."

SECTION 83. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and

acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. ~~Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission.~~

SECTION 84. G.S. 143-53(c) reads as rewritten:

"(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

~~Prior to adopting rules under this section, the Secretary of Administration may consult with the Advisory Budget Commission."~~

SECTION 85. G.S. 143-60 reads as rewritten:

"§ 143-60. Rules covering certain purposes.

The Secretary of Administration may adopt, modify, or abrogate rules covering the following purposes, in addition to those authorized elsewhere in this Article:

- (1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.
- (2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.
- (3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemical and/or physical tests of samples

submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.

- (4) Prescribing the manner in which purchases shall be made in emergencies.
- (5) Providing for such other matters as may be necessary to give effect to foregoing rules and provisions of this Article.
- (6) Prescribing the manner in which passenger vehicles shall be purchased.

Further, the Secretary of Administration may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies.

~~Prior to taking any action under this section, the Secretary of Administration may consult with the Advisory Budget Commission."~~

SECTION 86. G.S. 143-63 reads as rewritten:

"§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the Secretary of Administration, nor any assistant of ~~his, nor any member of the Advisory Budget Commission~~ the Secretary's shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a Class F felony. Upon conviction thereof, any such ~~Secretary, assistant or member of the Commission~~ Secretary or assistant shall be removed from office."

SECTION 87. G.S. 143-135.27 reads as rewritten:

"§ 143-135.27. (Effective until October 1, 2006) Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in ~~G.S. 143-1~~, G.S. 143C-1-1, are used and which is required by G.S. 143-129 to be publicly advertised. "State capital improvement project" does not include a performance-based cleanup of environmental damage resulting from the discharge or release of a petroleum product from an underground storage tank pursuant to G.S. 143-215.94B(f) and G.S. 143-215.94D(f).

"§ 143-135.27. (Effective October 1, 2006) Definition of capital improvement project.

As used in this Article, "State capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in ~~G.S. 143-1~~, G.S. 143C-1-1, are used and which is required by G.S. 143-129 to be publicly advertised."

SECTION 88. G.S. 143-214.4(g) reads as rewritten:

"(g) Any person who uses any cleaning agent in violation of the provisions of this section shall be responsible for an infraction for which the sanction is a penalty of not more than ten dollars (\$10.00). Notwithstanding ~~G.S. 143-3.1(a)~~, G.S. 14-3.1(a), the

clear proceeds of infractions pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 89. G.S. 143-215.40(a) reads as rewritten:

"(a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Environment and Natural Resources for the information of the Governor. ~~Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.~~"

SECTION 90. G.S. 143-215.73 reads as rewritten:

"§ 143-215.73. Recommendation and disbursal of grants.

After review of grant applications, project funds shall be disbursed and monitored by the Department. ~~After review, but before transfer of funds from the Department's reserve fund into accounts for specific projects, the Secretary may forward the applications to the Advisory Budget Commission for its review of the recommendations."~~

SECTION 91. G.S. 143-215.73A(e) reads as rewritten:

"(e) Distribution of the plan. ~~The Director of the Budget shall provide copies of the plan to the members of the Advisory Budget Commission when the Advisory Budget Commission meets to deliberate on the biennial budget or on the revised budget for the second year of the biennium.~~ The Director of the Budget shall also provide copies of the plan to the General Assembly along with the recommended biennial budget and the recommended revised budget for the second year of the biennium."

SECTION 92. G.S. 143-250 reads as rewritten:

"§ 143-250. Wildlife Resources Fund.

All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

Except as otherwise specifically provided by law, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, including the income received and accruing from the investment of license revenues, and all funds thereafter received from whatever sources shall be deposited to the credit

of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. License revenues include the proceeds from the sale of hunting, fishing, trapping, and related licenses, from the sale, lease, rental, or other granting of rights to real or personal property acquired or produced with license revenues, and from federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is being made. For purposes of this section, real property includes lands, buildings, minerals, energy resources, timber, grazing rights, and animal products. Personal property includes equipment, vehicles, machines, tools, and annual crops. The Wildlife Resources Fund herein created shall be subject to the provisions of the ~~Executive Budget Act, Chapter 143, Article 1 of State Budget Act, Chapter 143C of~~ the General Statutes of North Carolina as amended, and the provisions of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article, Chapter 75A, Article 1, and Chapter 113, Subchapter IV of the General Statutes of North Carolina. The Wildlife Resources Commission shall report to the Joint Legislative Commission on Governmental Operations before expending from the Wildlife Resources Fund more than the amount authorized in the budget enacted by the General Assembly for the fiscal period.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned."

SECTION 93. G.S. 143-318.14A(a) reads as rewritten:

"(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be "commissions, committees, and standing subcommittees of the General Assembly":

- (1) The Legislative Research Commission;
- (2) The Legislative Services Commission;
- ~~(3) The Advisory Budget Commission;~~
- (4) The Joint Legislative Utility Review Committee;
- (5) The Joint Legislative Commission on Governmental Operations;
- (6) The Joint Legislative Commission on Municipal Incorporations;
- (7) Repealed by Session Laws 1997, c. 443, s. 12.30, effective August 28, 1997.
- (8) The Joint Select Committee on Low-Level Radioactive Waste;
- (9) The Environmental Review Commission;
- (10) The Joint Legislative Transportation Oversight Committee;
- (11) The Joint Legislative Education Oversight Committee;
- (12) The Joint Legislative Commission on Future Strategies for North Carolina;
- (13) The Commission on Children with Special Needs;
- (14) The Legislative Committee on New Licensing Boards;

- (15) The Agriculture and Forestry Awareness Study Commission;
- (16) The North Carolina Study Commission on Aging; and
- (17) The standing Committees on Pensions and Retirement."

SECTION 94. G.S. 143-318.15 is repealed.

SECTION 95. G.S. 143-318.18 reads as rewritten:

"§ 143-318.18. Exceptions.

This Article does not apply to:

- (1) Grand and petit juries.
- (2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.
- (3) The Judicial Standards Commission.
- (4) Repealed by Session Laws 1991, c. 694, s. 9.
- (4a) The Legislative Ethics Committee.
- (4b) A conference committee of the General Assembly.
- (4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.
- (5) Law enforcement agencies.
- (6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.
- (7) Any public body subject to the ~~Executive Budget Act (G.S. 143-1 et seq.)~~ State Budget Act, Chapter 143C of the General Statutes and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.
- (8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.
- (9) Repealed by Session Laws 1991, c. 694, s. 9.
- (10) The Board of Awards.
- (11) The General Court of Justice."

SECTION 96. G.S. 143-341(3) reads as rewritten:

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

The Department of Administration has the following powers and duties:

...

- (3) Architecture and Engineering:
 - a. To examine and approve all plans and specifications for the construction or renovation of:
 - 1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and

2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to ~~G.S. 143-6~~ G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivisions b. and b1. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11."

SECTION 97. G.S. 143-341(8) reads as rewritten:

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

The Department of Administration has the following powers and duties:

...

(8) General Services:

- a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.
- b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.
- c. To provide necessary night watchmen for the public buildings and grounds.

- d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.
- e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.
- f. Struck out by Session Laws 1959, c. 68, s. 3.
- g. To establish and operate a mail service center that shall be used by all State agencies other than the Employment Security Commission, and in connection therewith and in the discretion of the Secretary, to do all things necessary in connection with the maintenance of the mail service center. The Secretary shall allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the mail service center. The Secretary shall develop a plan for the efficient operation of the center that meets the needs of State agencies, ensures timely delivery of mail, and ensures no loss of federal funds.
- h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.
- i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:
 - 1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
 - 2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
 - 3. To require on a schedule determined by the Department all State agencies to transfer ownership, custody or control of any or all passenger motor vehicles within the ownership, custody or control of that agency to the Department, except those motor vehicles under the ownership, custody or control of the Highway Patrol or the State Bureau of Investigation which are used primarily for law-enforcement purposes, and except those motor vehicles under the ownership, custody or control of the Department of Crime Control and Public Safety for Butner Public Safety which are used primarily for law-enforcement, fire, or emergency purposes.

4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department, using best management practices. The Department shall ensure that state-owned vehicles are replaced when most cost effective using a replacement formula developed by the Department and reviewed periodically for appropriateness of use. The Department shall report semiannually to the cochairs of the Joint Appropriations Subcommittee on General Government, on or before October 15 and March 15, on the effect of any new or revised replacement formula on the cost of operating the central motor pool, including the amount of any savings from use of any new or revised replacement formula.
5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all persons who will be driving the motor vehicle have valid drivers' licenses, to assign economically suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding G.S. 20-30(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary. The Department may provide law enforcement vehicles only to those agencies which have statutory pursuit authority.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

The amount allocated and charged by the Department of Administration to State agencies to which transportation is furnished shall be at least as follows:

- I. Pursuit vehicles and full size four-wheel drive vehicles \$.24/mile.
 - II. Vans and compact four-wheel drive vehicles – \$.22/mile.
 - III. All other vehicles – \$.20/mile.
7. To adopt, with the approval of the Governor, reasonable rules for the efficient and economical operation, maintenance, repair, and replacement, as limited in paragraph 4. of this subdivision, of all state-owned motor vehicles under the control of the Department, and to enforce those rules; and to adopt, with the approval of the Governor, reasonable rules regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules. The Department, with the approval of the Governor, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules adopted by the Department pursuant to this paragraph. Any person who violates a rule adopted by the Department and approved by the Governor is guilty of a Class 1 misdemeanor.
- 7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those

authorized by the procedure prescribed in this subdivision.

A State-owned passenger motor vehicle shall not be permanently assigned to an individual who is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless (i) the individual's duties are routinely related to public safety or (ii) the individual's duties are likely to expose the individual routinely to life-threatening situations. A State-owned passenger motor vehicle shall also not be permanently assigned to an agency that is likely to drive it on official business at a rate of less than 3,150 miles per quarter unless the agency can justify to the Division of Motor Fleet Management the need for permanent assignment because of the unique use of the vehicle. Each agency, other than the Department of Transportation, that has a vehicle assigned to it or has an employee to whom a vehicle is assigned shall submit a quarterly report to the Division of Motor Fleet Management on the miles driven during the quarter by the assigned vehicle. The Division of Motor Fleet Management shall review the report to verify that each motor vehicle has been driven at the minimum allowable rate. If it has not and if the department by whom the individual to which the car is assigned is employed or the agency to which the car is assigned cannot justify the lower mileage for the quarter, the permanent assignment shall be revoked immediately. The Department of Transportation shall submit an annual report to the Division of Motor Fleet Management on the miles driven during the year by vehicles assigned to the Department or to employees of the Department. If a vehicle included in this report has not been driven at least 12,600 miles during the year, the Department of Transportation shall review the reasons for the lower mileage and decide whether to terminate the assignment. The Division of Motor Fleet Management may not revoke the assignment of a vehicle to the Department of Transportation or an employee of that Department for failure to meet the minimum mileage requirement unless the Department of Transportation consents to the revocation.

Every individual who uses a State-owned passenger motor vehicle, pickup truck, or van to drive between the individual's official work station and his or her home, shall reimburse the State for these trips at a rate computed by the Department. This rate shall approximate the benefit derived from the use of the vehicle as prescribed by federal law. Reimbursement shall be for 20 days per month regardless of how many

days the individual uses the vehicle to commute during the month. Reimbursement shall be made by payroll deduction. Funds derived from reimbursement on vehicles owned by the Motor Fleet Management Division shall be deposited to the credit of the Division; funds derived from reimbursements on vehicles initially purchased with appropriations from the Highway Fund and not owned by the Division shall be deposited in a Special Depository Account in the Department of Transportation, which shall revert to the Highway Fund; funds derived from reimbursement on all other vehicles shall be deposited in a Special Depository Account in the Department of Administration which shall revert to the General Fund. Commuting, for purposes of this paragraph, does not include those individuals whose office is in their home, as determined by the Department of Administration, Division of Motor Fleet Management. Also, this paragraph does not apply to the following vehicles: (i) clearly marked police and fire vehicles, (ii) delivery trucks with seating only for the driver, (iii) flatbed trucks, (iv) cargo carriers with over a 14,000 pound capacity, (v) school and passenger buses with over 20 person capacities, (vi) ambulances, (vii) [Repealed]. (viii) bucket trucks, (ix) cranes and derricks, (x) forklifts, (xi) cement mixers, (xii) dump trucks, (xiii) garbage trucks, (xiv) specialized utility repair trucks (except vans and pickup trucks), (xv) tractors, (xvi) unmarked law-enforcement vehicles that are used in undercover work and are operated by full-time, fully sworn law-enforcement officers whose primary duties include carrying a firearm, executing search warrants, and making arrests, and (xvii) any other vehicle exempted under Section 274(d) of the Internal Revenue Code of 1954, and Federal Internal Revenue Services regulations based thereon. The Department of Administration, Division of Motor Fleet Management, shall report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on individuals who use State-owned passenger motor vehicles, pickup trucks, or vans between their official work stations and their homes, who are not required to reimburse the State for these trips.

The Department of Administration shall revoke the assignment or require the Department owning the vehicle to revoke the assignment of a State-owned passenger motor vehicle, pickup truck or van to any individual who:

- I. Uses the vehicle for other than official business except in accordance with the commuting rules;
- II. Fails to supply required reports to the Department of Administration, or supplies incomplete reports, or supplies reports in a form unacceptable to the Department of Administration and does not cure the deficiency within 30 days of receiving a request to do so;
- III. Knowingly and willfully supplies false information to the Department of Administration on applications for permanent assignments, commuting reimbursement forms, or other required reports or forms;
- IV. Does not personally sign all reports on forms submitted for vehicles permanently assigned to him or her and does not cure the deficiency within 30 days of receiving a request to do so;
- V. Abuses the vehicle; or
- VI. Violates other rules or policy promulgated by the Department of Administration not in conflict with this act.

A new requisition shall not be honored until the Secretary of the Department of Administration is assured that the violation for which a vehicle was previously revoked will not recur.

The Department of Administration, with the approval of the Governor, may delegate, or conditionally delegate, to the respective heads of agencies which own passenger motor vehicles or to which passenger motor vehicles are permanently assigned by the Department, the duty of enforcing all or part of the rules adopted by the Department of Administration pursuant to this subdivision 7a. The Department of Administration, with the approval of the Governor, may revoke this delegation of authority.

~~Prior to adopting rules under this paragraph, the Secretary of Administration may consult with the Advisory Budget Commission.~~

Notwithstanding the provisions of this section and G.S. 14-247, the Department of Administration may allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the North Carolina State Games to use State trucks and vans for the State Games of North Carolina. The Department of Administration shall not charge any fees for the use of the vehicles for the State Games. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The organization that conducts the State Games shall carry liability insurance

- of not less than one million dollars (\$1,000,000) covering such vehicles while in its use and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the State Games.
8. To adopt and administer rules for the control of all state-owned passenger motor vehicles and to require State agencies to keep all records and make all reports regarding motor vehicle use as the Secretary deems necessary.
 9. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Department.
 10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.
 11. To report annually to the General Assembly on any rules adopted, amended or repealed under paragraphs 3, 7, or 7a of this subdivision.
- j. To establish and operate central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.
- k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.
- l. To provide necessary information service for visitors to the Capitol.
- m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor."
- SECTION 98.** G.S. 143-344(d) is repealed.

SECTION 99. G.S. 143-722(b) as amended by Section 4 of S.L. 2004-196 reads as rewritten:

"(b) Any non-State entity as that term is defined in ~~G.S. 143-6.2~~ G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of ~~G.S. 143-6.2~~ G.S. 143-6-14."

SECTION 100. G.S. 143A-10 reads as rewritten:

"§ 143A-10. Governor; continuation of powers and duties; staff.

All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act; ~~however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly Act.~~

SECTION 101. G.S. 143B-10(d) reads as rewritten:

"(d) Appointment of Committees or Councils. – The head of each principal department may create and appoint committees or councils to consult with and advise the department. The General Assembly declares its policy that insofar as feasible, such committees or councils shall consist of no more than 12 members, with not more than one from each congressional district. If any department head desires to vary this policy, he must make a request in writing to the Governor, stating the reasons for the request. The Governor may approve the request, but may only do so in writing. Copies of the request and approval shall be transmitted ~~to the Advisory Budget Commission and to~~ the Joint Legislative Commission on Governmental Operations. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved in advance by the Director of the Budget. Per diem, travel, and subsistence payments to members of the committees or councils created in connection with federal programs shall be paid from federal funds unless otherwise provided by law.

An annual report listing these committees or councils, the total membership on each, the cost in the last 12 months and the source of funding, and the title of the person who made the appointments shall be made ~~to the Advisory Budget Commission and~~ the Joint Legislative Commission on Governmental Operations by March 31 of each year.

~~Prior to taking any action under this subsection, the Director of the Budget may consult with the Advisory Budget Commission."~~

SECTION 102. G.S. 143B-131.10 reads as rewritten:

"§ 143B-131.10. Exceptions.

Notwithstanding ~~G.S. 143-28~~, G.S. 143C-1-1, the following provisions do not apply to this Part: ~~G.S. 143-16.3 and G.S. 143-23~~ G.S. 143C-6-4, 143C-6-5, and 143C-6-9."

SECTION 103. G.S. 143B-139.2 reads as rewritten:

"§ 143B-139.2. Secretary of Health and Human Services requests for grants-in-aid from non-State agencies.

It is the intent of this General Assembly that non-State health and human services agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Health and Human Services for recommendations to the Governor ~~and the Advisory Budget Commission~~ and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Health and Human Services, provide a postaudit of their operations that has been done by a certified public accountant."

SECTION 104. G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars (\$100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be ~~audited as required by G.S. 143-6.1.~~ subject to the requirements of G.S. 143C-6.14. Organizations subject to G.S. 159-34 shall be exempt from this requirement."

SECTION 105. G.S. 143B-313.2(e) reads as rewritten:

"(e) Removal. – The Governor may remove, as provided in ~~G.S. 143-13,~~ Article 10 of Chapter 143C of the General Statutes any member of the North Carolina Parks and Recreation Authority appointed by the Governor for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any member of the North Carolina Parks and Recreation Authority appointed by the General Assembly for misfeasance, malfeasance, or nonfeasance."

SECTION 106. G.S. 143B-394.10(a) reads as rewritten:

"(a) There is established in the Department of Administration the North Carolina Fund for Displaced Homemakers. The Fund shall be administered by the North Carolina Council for Women in accordance with ~~Article 1 of Chapter 143~~ Chapter 143C of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than ten percent (10%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund."

SECTION 107. G.S. 143B-426.11 reads as rewritten:**"§ 143B-426.11. Powers of Agency.**

In order to enable it to carry out the purposes of this Part, the Agency:

- (1) Has the powers of a body corporate, including the power to sue and be sued, to make contracts, to hold and own copyrights and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) May make all necessary contracts and arrangements with any parties which will serve the purposes and facilitate the business of the North Carolina Agency for Public Telecommunications; except that, the Agency may not contract or enter into any agreement for the production by the Agency of programs or programming materials with any person, group, or organization other than government agencies; principal State departments; public and noncommercial broadcast licensees;
- (3) May rent, lease, buy, own, acquire, mortgage, or otherwise encumber and dispose of such property, real or personal; and construct, maintain, equip and operate any facilities, buildings, studios, equipment, materials, supplies and systems as said Board may deem proper to carry out the purposes and provisions of this Part;

- (4) May establish an office for the transaction of its business at such place or places as the Board deems advisable or necessary in carrying out the purposes of this Part;
- (5) May apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources for any and all of the purposes authorized in this Part; may extend or distribute the funds in accordance with directions and requirements attached thereto or imposed thereon by the federal agency, the State of North Carolina or any political subdivision thereof, or any public or private lender or donor; and may give such evidences of indebtedness as shall be required, but no indebtedness of any kind incurred or created by the Agency shall constitute an indebtedness of the State of North Carolina or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina or any political subdivision thereof. At no time may the total outstanding indebtedness of the Agency, excluding bond indebtedness, exceed five hundred thousand dollars (\$500,000) unless the Agency has consulted with the Director of the Budget;
- (6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Agency and incident to the administration and operation thereof, and may pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;
- (7) Under such conditions as the Board may deem appropriate to the accomplishment of the purposes of this Part, may distribute in the form of grants, gifts, or loans any of the revenues and earnings received by the Agency from its operations;
- (8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be exercised, and may provide for the creation of such divisions and for the appointment of such committees, and the functions thereof, as the Board deems necessary or expedient in facilitating the business and purposes of the Agency;
- (9) The Board shall be responsible for all management functions of the Agency. The chairman shall serve as the chief executive officer, and shall have the responsibility of executing the policies of the Board. The Executive Director shall be the chief operating and administrative officer and shall be responsible for carrying out the decisions made by the Board and its chairman. The Executive Director shall be appointed by the Governor upon the recommendation of the Board and shall serve at the pleasure of the Governor. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. Subject to the provisions of the State Personnel Act and with the approval of the Board, the Executive Director may appoint, employ, dismiss and fix the compensation of such professional, administrative, clerical and other employees as the Board deems necessary to carry out the purposes of this Part; but any employee who serves as the director of any division of the Agency

which may be established by the Board shall be appointed with the additional approval of the Secretary of Administration. There shall be an executive committee consisting of three of the appointed members and three of the ex officio members elected by the Board and the chairman of the Board, who shall serve as chairman of the executive committee. The executive committee may do all acts which are authorized by the bylaws of the Agency. Members of the executive committee shall serve until their successors are elected;

- (10) May do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section; and
- (11) May do any and all things necessary to accomplish the purposes of this Part.

Nothing herein authorizes the Agency to exercise any control over any public noncommercial broadcast licensee, its staff or facilities or over any community antenna television system (Cable TV; CATV), its staff, employees or facilities operating in North Carolina, or the Police Information Network (PIN), its staff, employees or facilities or the Judicial Department.

The property of the Agency shall not be subject to any taxes or assessments.

~~Prior to taking any action under subdivisions (5) or (7) of this section, the Board may consult with the Advisory Budget Commission."~~

SECTION 108. G.S. 143B-426.14 reads as rewritten:

"§ 143B-426.14. Issuance of bonds.

As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, telecommunications equipment or systems or any other matter or thing which the Agency is herein authorized to acquire, construct, equip, maintain, or operate, the Agency ~~may, with the approval of the Advisory Budget Commission,~~ may at one time or from time to time issue negotiable revenue bonds of the Agency. The principal and interest of the revenue bonds shall be payable solely from the revenues to be derived from the operation of all or any part of the Agency's properties and facilities. A pledge of the net revenues derived from the operation of specified properties and facilities of the Agency may be made to secure the payment of the bonds as they mature. Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The bonds and the income therefrom shall be exempt from all taxation within the State."

SECTION 109. G.S. 143B-454(a) reads as rewritten:

"(a) In order to enable it to carry out the purposes of this Part, the said Authority shall:

- (1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

- (3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;
- (4) **(See Editor's Note)** Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, excluding terminal railroads;
- (4) **(See Editor's Note)** Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, and to acquire, construct, and maintain, but not operate, such rail facilities as may be necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;
- (5) The Authority shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected;
- (6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;
- (7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

- (8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;
- (9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivision thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;
- (10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;
- (11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.
- (12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and
- (13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon.

~~Prior to taking any action under this subsection, the Authority may consult with the Advisory Budget Commission."~~

SECTION 110. G.S. 143B-456(b) reads as rewritten:

"(b) Prior to the sale and delivery of any bonds or notes by the Authority, the Governor shall approve the general purposes of and the general security provisions for

any such bonds or notes. Such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Authority shall determine. Bonds or notes may be issued under the provisions of this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Part and the provisions of the resolution authorizing the issuance of such bonds or notes or the trust agreement securing the same. ~~Prior to taking any action under this subsection, the Governor may consult with the Advisory Budget Commission."~~

SECTION 111. G.S. 143B-516(b)(2) reads as rewritten:

"(b) The Secretary shall have the following powers and duties:

...

- (2) Close a State youth development center when its operation is no longer justified and transfer State funds appropriated for the operation of that youth development center to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centers, provided the Advisory Budget Commission reviews this action after consultation with the Joint Legislative Commission on Governmental Operations."

SECTION 112. G.S. 147-9.3 reads as rewritten:

"§ 147-9.3. **Annuity contracts; salary deductions.**

Notwithstanding the provisions of ~~G.S. 143-3.3,~~ G.S. 143B-426.39A and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b) (1) (A) (i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any."

SECTION 113. G.S. 147-9.4 reads as rewritten:

"§ 147-9.4. **Deferred Compensation Plan.**

Notwithstanding the provisions of ~~G.S. 143-3.3,~~ G.S. 143B-426.39A and notwithstanding any provision of law relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the

employer, may from time to time enter into a contract with a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before January 1, 1983, and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section."

SECTION 114. G.S. 147-12(a)(3) reads as rewritten:

"§ 147-12. Powers and duties of Governor.

(a) In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

...

- (3) To make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, the Governor may also appoint to fill any vacancy occurring in that office, and the person the Governor appoints shall serve for the unexpired term of the office and until the person's successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

- a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of the office,
- b. During the continued absence of the regular holder of the office, or
- c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

- a. Upon the termination of the incapacity of the officer in whose stead the person acts,
- b. Upon the return of the officer in whose stead the person acts, or
- c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as the Governor deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of the office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor. ~~Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission."~~

SECTION 115. G.S. 147-36(16) reads as rewritten:

"§ 147-36. Duties of Secretary of State.

It is the duty of the Secretary of State:

...

- (16) To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and shall expend grant funds pursuant to ~~Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act.~~ Chapter 143C of the General Statutes, The State Budget Act."

SECTION 116. G.S. 147-64.7(b) reads as rewritten:

"(b) Experts; Contracted Audits. –

- (1) The Auditor may obtain the services of independent public accountants, qualified management consultants, or other professional persons and experts as he deems necessary or desirable to carry out the duties and functions assigned under the act.
- (2) No State agency may enter into any contract for auditing services which may impact on the State's comprehensive annual financial report without consultation with, and the prior written approval of, the

Auditor, except in instances where audits are called for by the Governor under G.S. ~~143-3~~ 143C-2-1 and he shall so notify the Auditor. The Auditor shall prescribe policy and establish guidelines containing appropriate criteria for selection and use of independent public accountants, qualified management consultants, or other professional persons by State agencies and governing bodies to perform all or part of the audit function."

SECTION 117. G.S. 147-64.11 reads as rewritten:

"§ 147-64.11. Review of office.

The Auditor may, on his own initiative and as often as he deems necessary, or as requested by the General Assembly, cause to be made a quality review audit of the operations of his office. Such a "peer review" shall be conducted in accordance with standards prescribed by the accounting profession. Upon the recommendation of ~~the Advisory Budget Commission~~, the Joint Legislative Commission on Governmental Operations may contract with an independent public accountant, qualified management consultant, or other professional person to conduct a financial and compliance, economy and efficiency, and program result audit of the State Auditor."

SECTION 118. G.S. 147-68 reads as rewritten:

"§ 147-68. To receive and disburse moneys; to make reports.

(a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer.

(b) No moneys shall be paid out of the treasury except on warrant unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor ~~and Advisory Budget Commission~~ annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(d1) The Treasurer shall report to the Joint Legislative Commission on Governmental Operations, to the Chairman, Appropriations Base Budget Committee and the Chairman, Appropriations Expansion Budget Committee of the House of Representatives, and to the Chairman, Committee on Appropriations and the Chairman, Committee on Base Budget of the Senate, on a quarterly basis, concerning all investments and deposits made by and through his office. The report shall include a listing of all investments with or on behalf of the State or any of its agencies or institutions and shall include the particular agency or institution, fund, rate of return, duration of the investment, and the amount of deposit on all noninterest bearing accounts. The first report is due 90 days after July 1, 1982, and shall include all investments and deposits made during the 1981-82 fiscal year and all investments made during the first quarter of the 1982-83 fiscal year; thereafter, reports shall be made on a quarterly basis including all investments and deposits made during that reporting period.

(d2) After consulting with the Select Committee on Information Technology and the Joint Legislative Commission on Governmental Operations and after consultation with and approval of the Information Resources Management Commission, the Department of State Treasurer may spend departmental receipts for the 2000-2001 fiscal year to continue improvement of the Department's investment banking operations

system, retirement payroll systems, and other information technology infrastructure needs. The Department of State Treasurer shall report by January 1, 2001, and annually thereafter to the following regarding the amount and use of the departmental receipts: the Joint Legislative Commission on Governmental Operations, the Chairs of the General Government Appropriations Subcommittees of both the House of Representatives and the Senate, and the Select Committee on Information Technology.

(e) The State Treasurer, in carrying out the responsibilities of this section, shall be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to ~~the Advisory Budget Commission~~, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. The State Treasurer, for all other purposes, is subject to ~~Article 1 of Chapter 143~~ Chapter 143C of the General Statutes."

SECTION 119. G.S. 147-69.3(h) reads as rewritten:

"(h) The State Treasurer shall prepare, as of the end of each fiscal year, a report on the financial condition of each investment program created pursuant to this section. A copy of each report shall be submitted within 30 days following the end of the fiscal year to the official, institution, board, commission or other agency whose funds are invested, the State Auditor, ~~the Advisory Budget Commission~~, and the chairs of the Finance Committees of the House of Representatives and the Senate."

SECTION 120. G.S. 147-86.10 reads as rewritten:

"§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, commissions, and officers of the State, whether or not subject to the ~~Executive Budget Act, Chapter 143, Article 1~~ State Budget Act, Chapter 143C of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

SECTION 121. G.S. 147-86.11 reads as rewritten:

"§ 147-86.11. Cash management for the State.

(a) Uniform Plan. – The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to ~~the Advisory Budget Commission~~ and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, "State agency" means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, 147-86.14, and 147-86.22, this Article does not apply to the agencies, institutions, bureaus, boards,

commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. – The State Auditor pursuant to authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations the Auditor deems advisable to the agencies.

(c) Treasurer's Report. – The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. – The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. "Net earnings" are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. – For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

- (1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
 - a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
 - b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.
- (2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute.
- (3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited.
- (4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars (\$500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection procedures.
- (5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.
- (6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. – For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

- (1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate payee.

- (2) The order in which appropriations and other available resources are expended shall be subject to the provisions of ~~G.S. 143-27~~ Chapter 143C of the General Statutes regardless of whether the State agency disbursing or expending the moneys is subject to the ~~Executive Budget Act~~ State Budget Act.
 - (3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State funds.
 - (4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent practicable.
 - (5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.
- (g) Interest Maximized. – The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:
- (1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest allocations.
 - (2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.
- (h) New Technologies. – The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.
- (i) Penalty. – A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee."

SECTION 122. G.S. 147-86.30(c) reads as rewritten:

"(c) Creation of Fund Reserve. – The Commission shall reserve, and shall not expend, fifty percent (50%) of each annual payment allocated to the Health and Wellness Trust Fund pursuant to ~~G.S. 143-16.4~~ G.S. 143C-9-3 during years 2001 through 2025 to create and build the Fund Reserve. During years 2001 through 2025, the Commission may expend any investment earnings on the reserved funds. Beginning in year 2026, and thereafter, the Commission shall not expend the reserved funds but may continue to expend any investment earnings on the reserved funds."

SECTION 123. G.S. 147-86.35(b) as amended by Section 3 of S.L. 2004-196 reads as rewritten:

"(b) Any non-State entity as that term is defined in ~~G.S. 143-6.2~~ G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of ~~G.S. 143-6.2~~ G.S. 143C-6-14."

SECTION 124. G.S. 150B-21.4(a) reads as rewritten:

"(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the ~~Executive Budget Act, Article 1 of Chapter 143, State Budget Act, Chapter 143C of the General Statutes~~ it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change."

SECTION 125. G.S. 159-7(b) reads as rewritten:

"(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

- (1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.
- (2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.
- (3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.
- (4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.
- (5), (6) Repealed by Session Laws 1975, c. 514, s. 2.
- (7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).
- (8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.
- (9) Repealed by Session Laws 1975, c. 514, s. 2.
- (10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the ~~Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)~~ State Budget Act (Chapter 143C of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the ~~Executive Budget Act, State Budget Act,~~ and (iii) operates on an area, regional, or multi-unit 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.
- (11) Repealed by Session Laws 1975, c. 514, s. 2.

- (12) "Sinking fund" means a fund held for the retirement of term bonds.
- (13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.
- (14) "Taxes" do not include special assessments.
- (15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the ~~Executive Budget Act (Article 1 of Chapter 143 of the General Statutes)~~ State Budget Act (Chapter 143C of the General Statutes) and 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.
- (16) "Vending facilities" has the same meaning as it does in ~~G.S. 143-12.1. G.S. 111-42(d)~~, but also means any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means."

SECTION 126. This act becomes effective July 1, 2007, and applies to the budget for the 2007-2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 7:44 p.m. on the 7th day of August, 2006.

H.B. 2762

Session Law 2006-204

AN ACT RELATING TO THE APPOINTMENT AND COMPENSATION OF THE EXECUTIVE DIRECTOR AND ASSISTANT DIRECTOR OF THE U.S.S. NORTH CAROLINA BATTLESHIP COMMISSION AND RELATING TO COVERAGE UNDER THE STATE PERSONNEL ACT OF CERTAIN EMPLOYEES OF THE DEPARTMENT OF CULTURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-74.2 reads as rewritten:

"§ 143B-74.2. U.S.S. North Carolina Battleship Commission – employees.

The Department of Cultural Resources is hereby authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this Article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. The Commission shall appoint and fix the salary of an Executive Director and Assistant Director to serve at its pleasure. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in

maintaining and operating the ship for the purposes of this Article shall be, insofar as practicable, North Carolina materials."

SECTION 2. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

...

(26) The Executive Director and the Assistant Director of the U.S.S. North Carolina Battleship Commission."

SECTION 3. Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-54. Salaries, promotions, and leave of employees of the North Carolina Department of Cultural Resources.

(a) The employees listed in subsection (b) of this section are exempt from the classification and compensation rules established by the State Personnel Commission pursuant to G.S. 126-4(1) through (4); G.S. 126-4(5) only as it applies to hours and days of work, vacation, and sick leave; G.S. 126-4(6) only as it applies to promotion and transfer; G.S. 126-4(10) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for G.S. 126-7.1.

(b) The following employees of the Department of Cultural Resources are exempt as provided in subsection (c) of this section:

- (1) Director and Associate Directors of the North Carolina Museum of History.
- (2) Program Chiefs and Curators.
- (3) Regional History Museum Administrators and Curators.
- (4) North Carolina Symphony.
- (5) Director, Associate Directors, and Curators of Tryon Palace.
- (6) Director, Associate Directors, and Curators of Transportation Museum.
- (7) Director and Associate Directors of the North Carolina Arts Council.
- (8) Director, Assistant Directors, and Curators of the Division of State Historic Sites.

(c) The exemptions authorized by subsection (a) of this section and enumerated in subsection (b) of this section shall be used to develop organizational classification and compensation innovations that will result in the enhanced efficiency of operations. The Office of State Personnel shall assist the Secretary of the Department of Cultural Resources in the development and implementation of an organizational structure and human resources programs that make the most appropriate use of the exemptions, including (i) a system of job categories or descriptions tailored to the agency's needs; (ii) policies regarding paid time off for agency personnel and the voluntary sharing of such time off; and (iii) a system of uniform performance assessments for agency personnel tailored to the agency's needs. The Secretary of the Department of Cultural Resources may, under the supervision of the Office of State Personnel, develop and implement organizational classification and compensation innovations having the potential to benefit all State agencies."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:45 a.m. on the 8th day of August, 2006.

S.B. 1216**Session Law 2006-205**

AN ACT TO (1) ALLOW LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT, AND (2) ALLOW ENTITIES DESIGNATED BY THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO SHARE INFORMATION WITH A LOCAL DEPARTMENT OF SOCIAL SERVICES THAT IS RELEVANT TO AN ASSESSMENT OF REPORTS OF CHILD ABUSE, NEGLECT, AND DEPENDENCY BY A LOCAL DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities."

SECTION 2. G.S. 7B-3100(a) reads as rewritten:

"(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon ~~request~~, request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 9:46 a.m. on the 8th day of August, 2006.

S.B. 2051**Session Law 2006-206**

AN ACT TO REDUCE ENERGY, FUEL, AND WATER CONSUMPTION IN THE STATE THROUGH: (1) DEVELOPMENT OF A PLAN TO INCREASE THE AVAILABILITY AND USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLE FLEETS; (2) PROVISION OF ENERGY ASSISTANCE TO LOW-INCOME PERSONS; (3) DEVELOPMENT OF A STRATEGIC PLAN TO EXPAND THE BIOFUELS INDUSTRY IN NORTH CAROLINA; AND (4) STUDY MECHANISMS TO IMPROVE ENERGY AND WATER CONSERVATION IN STATE-OWNED FACILITIES.

The General Assembly of North Carolina enacts:

PART I. DEVELOP PLAN FOR TARGETED CONVERSION OF FUELING FACILITIES TO PROMOTE THE AVAILABILITY AND USE OF ALTERNATIVE FUELS

SECTION 1. In order to promote attainment of the twenty percent (20%) reduction or displacement of petroleum products consumed in State-owned vehicle fleets by January 1, 2010, as required by Section 19.5 of S.L. 2005-276, the Department of Administration shall develop a plan for the targeted conversion of fuel dispensing facilities to provide greater availability of biodiesel, ethanol, and other alternative fuels. The Department shall consult with affected State agencies to identify measures to increase the efficiency and cost-effective utilization of resources and consider this information in the development of the plan. The Department of Administration shall submit the plan to the Joint Legislative Commission on Governmental Operations no later than November 1, 2006, and shall include updates on the progress in implementing the plan as part of the report required under Section 19.5(c) of S.L. 2005-276.

PART II. PROVIDE ENERGY ASSISTANCE TO LOW-INCOME PERSONS

SECTION 2. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 34A. North Carolina Energy Assistance Act for Low-Income Persons.

"§ 143B-216.72A. Legislative findings and purpose.

(a) The General Assembly finds that:

- (1) Maintaining the general health, welfare, and prosperity of the people of this State requires that all citizens receive essential levels of heat and electric service regardless of their economic circumstances.
- (2) Serving the State's most vulnerable citizens, its low-income elderly, persons with disabilities, families with children, high residential energy users, and households with a high-energy burden, is a priority.
- (3) Conserving energy benefits all citizens and the environment.
- (4) Ensuring proper payment to public utilities and other entities providing energy services actually rendered is a responsibility of this State.
- (5) Declining federal low-income energy assistance funding necessitates a State response to ensure the continuity and further development of energy assistance and related policies and programs in this State.
- (6) Current energy assistance policies and programs have benefited North Carolina citizens and should be continued with the modifications provided in this Part.

(b) The General Assembly declares that it is the policy of this State that weatherization, replacement of heating and cooling systems, and other energy-related assistance programs be utilized to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety. The State shall utilize all appropriate and available means to fund the Weatherization Assistance Program for Low-Income Families and the Heating/Air Repair and Replacement Program under G.S. 108A-70.30, and any other energy-related assistance program for low-income persons while, to the extent possible, identifying and utilizing sources of funding to achieve the objectives of this Part.

"§ 143B-216.72B. Definitions.

The following definitions apply to this Part:

- (1) Applicant. – A member of the family residing in the dwelling unit, the owner, or designated agent of the owner of a dwelling unit applying for program services.
- (2) Department. – The Department of Health and Human Services.

- (3) Secretary. – The Secretary of Health and Human Services.
- (4) Subgrantee. – An entity managing a weatherization project that receives a federal grant of funds awarded pursuant to 10 C.F.R. § 440 (1 January 2006 edition) from this State or other entity named in the Notification of Grant Award and otherwise referred to as the grantee.
- (5) Weatherization. – The modification of homes and home heating and cooling systems to improve heating and cooling efficiency by caulking and weather stripping, as well as insulating ceilings, attics, walls, and floors.

"§ 143B-216.72C. The Office of Economic Opportunity designated agency; powers and duties.

(a) The Office of Economic Opportunity of the Department shall administer the Weatherization Assistance Program for Low-Income Families established by 42 U.S.C. § 6861, et seq., and 42 U.S.C. § 7101, et seq.; the Heating/Air Repair and Replacement Program established by the Secretary under G.S. 108A-70.30; and any other energy-related assistance program for the benefit of low-income persons in existing housing. The Office of Economic Opportunity shall exercise the following powers and duties:

- (1) Establish standards and criteria to carry out the provisions and purposes of this Part.
- (2) Develop policy, criteria, and standards for receiving and processing applications for weatherization assistance.
- (3) Make decisions and pursue appeals from decisions to accept or deny applications for weatherization, replacement of heating and cooling systems, and other energy-related assistance programs or otherwise participate in the State plan as a subgrantee or contractor.
- (4) Adopt rules, consistent with the laws of this State, that may be required by the federal government for grants-in-aid for the Weatherization Assistance Program for Low-Income Families, the Heating/Air Repair and Replacement Program, or other energy-related assistance programs for the benefit of low-income residents in existing housing. This section shall be liberally construed in order that this State and its citizens may benefit from such grants-in-aid.
- (5) Establish procedures for the submission of periodic reports by any community action agency or other agency or entity authorized to manage a weatherization project, replacement of heating and cooling systems, or other energy-related assistance project.
- (6) Implement criteria for periodic review of weatherization, replacement of heating and cooling systems, or other energy-related programs in existing housing for low-income households.
- (7) Solicit, accept, hold, and administer on behalf of this State any grants or bequests of money, securities, or property for the benefit of low-income residents in existing housing for use by the Department or other agencies in the administration of this Part.
- (8) Create a Policy Advisory Council within the Office of Economic Opportunity that shall advise the Office of Economic Opportunity with respect to the development and implementation of a Weatherization Program for Low-Income Families, the Heating/Air Repair and

Replacement Program, and any other energy-related assistance program for the benefit of low-income persons in existing housing.

(b) The Secretary shall have final decision-making authority with regard to all functions described in this Part."

PART III. DEVELOP BIOFUELS INDUSTRY STRATEGIC PLAN

SECTION 3.1. There is established the Biofuels Industry Strategic Plan Work Group. The purpose of the Work Group is to develop a strategic plan for expansion of biofuels as an industry in North Carolina. The Work Group shall include representatives of the College of Agriculture and Life Sciences at North Carolina State University, the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University, the North Carolina Biotechnology Center, and the Rural Economic Development Center, Inc. In developing this strategic plan, the Work Group shall delineate the increasing role of biotechnology in the development of biofuels and may consult with all of the following:

- (1) The Department of Administration.
- (2) The Department of Agriculture and Consumer Services.
- (3) The Department of Commerce.
- (4) The Department of Environment and Natural Resources.
- (5) The Department of Transportation.
- (6) The University of North Carolina System.
- (7) The Community College System.
- (8) The North Carolina Solar Center at North Carolina State University.
- (9) The North Carolina Farm Bureau Federation.
- (10) The North Carolina State Grange.
- (11) The North Carolina Agribusiness Council.
- (12) The North Carolina Forestry Association.
- (13) Representatives of private industry that are engaged in biotechnology and the biofuels industry.
- (14) Any other entity that the Biofuels Industry Strategic Plan Work Group deems appropriate, particularly entities that are engaged in biotechnology and the biofuels industry.

SECTION 3.2. The Biofuels Industry Strategic Plan Work Group shall submit an interim report on the development of the strategic plan, including any preliminary findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 15 January 2007. The Biofuels Industry Strategic Plan Work Group shall submit a final report on the development of the strategic plan, including any findings, recommendations, and legislative proposals, to the Environmental Review Commission no later than 1 April 2007.

PART IV. CONDUCT STUDY TO IMPROVE ENERGY AND WATER CONSERVATION IN STATE-OWNED FACILITIES

SECTION 4.1. In an effort to improve energy and water conservation by State departments, agencies, and institutions, the Joint Legislative Oversight Committee on Capital Improvements shall study the following:

- (1) The role of repair and renovation investments and related costs in reducing energy and water use in existing State-owned facilities by twenty percent (20%) by January 1, 2012.
- (2) The construction and design of new facilities, facility additions, and facility renovations with the goal of reducing energy and water use by twenty percent (20%) by January 1, 2012.
- (3) The State's method of funding and planning capital projects to improve the integration of long-term operating costs, such as energy and water use, into the design of State facilities.
- (4) The State's method of funding utility costs for State facilities and whether this method of funding creates adequate incentives for State departments, agencies, and institutions to reduce energy and water use, thereby reducing the State's utility costs.
- (5) The costs and benefits of constructing green buildings, Leadership in Energy and Environmental Design (LEED) certified buildings, building commissioning, and other design and construction techniques when constructing new State-owned facilities, facility additions, and facility renovations.
- (6) The relationship of guaranteed energy savings contracts to the State's investment in State-owned capital facilities.
- (7) Any other issue the Committee determines is pertinent to the reduction of energy and water use in State-owned facilities.

SECTION 4.2. No later than February 1, 2007, the Joint Legislative Oversight Committee on Capital Improvements shall submit a report, including any recommendations or legislative proposals, to the 2007 General Assembly.

PART IVA. CONDUCT STUDY OF THE NORTH CAROLINA UTILITIES COMMISSION REGULATING THE PRODUCTION AND DISTRIBUTION OF GASOLINE AND OTHER RELATED PETROLEUM PRODUCTS

SECTION 4A.1. The General Assembly finds that the cost, availability, and distribution of gasoline and other related petroleum products have become as critical to the general public and the State's economy as electric power, natural gas, and other public utilities currently regulated by the North Carolina Utilities Commission. Accordingly, the Joint Legislative Utility Review Committee established under Article 12A of Chapter 120 of the General Statutes shall study the desirability and the feasibility of the North Carolina Utilities Commission regulating the production and distribution of gasoline and other related petroleum products as a public utility.

SECTION 4A.2. No later than February 1, 2007, the Joint Legislative Utility Review Committee shall submit a report, including its findings and any recommendations or legislative proposals, to the 2007 General Assembly.

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:46 a.m. on the 8th day of August, 2006.

S.B. 1295

Session Law 2006-207

AN ACT TO INCREASE PROTECTIONS FOR CONSUMERS WHO RECEIVE UNSOLICITED FACSIMILES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Unsolicited Facsimiles.

"§ 75-115. The following definitions apply in this Article:

- (1) Established business relationship. –
 - a. A relationship between a seller and a consumer based on:
 1. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates within the 18 months immediately preceding the date of an unsolicited advertisement; or
 2. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of an unsolicited advertisement.
 - b. A relationship between a tax-exempt nonprofit organization and a person based on:
 1. The person's association with the tax-exempt nonprofit organization as a member, contributor, or volunteer of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement;
 2. The person's subscription to or use of the services of the tax-exempt nonprofit organization within the 18 months immediately preceding the date of an unsolicited advertisement; or
 3. The person's inquiry regarding the tax-exempt nonprofit organization within the three months immediately preceding the date of an unsolicited advertisement.
- (2) Telephone facsimile machine. – Equipment that has the capacity to do either or both of the following:
 - a. Transcribe text or images or both from paper into an electronic signal and to transmit that signal over a regular telephone line.
 - b. Transcribe text or images or both from an electronic signal received over a regular telephone line onto paper.
- (3) Unsolicited advertisement. – Any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

"§ 75-116. Prohibition of unsolicited facsimiles; exception.

(a) No person or entity, if either the person or entity or the recipient is located within the State of North Carolina, shall (i) use any telephone facsimile machine, computer, or other device to send or (ii) cause another person or entity to use a telephone facsimile machine to send an unsolicited advertisement to a telephone facsimile machine.

(b) This section shall not apply to a person or entity that has an established business relationship with the recipient of the facsimile. However, the person or entity who sends an unsolicited advertisement under this subsection shall provide a notice in the unsolicited advertisement that: (i) is clear and conspicuous and on the first page of the unsolicited advertisement; (ii) states that the recipient may make a request to the sender to "do not send" any future unsolicited advertisements to a telephone facsimile machine and that the sender's failure to comply with the request is unlawful; and (iii) includes a toll-free domestic telephone number or facsimile machine number that the recipient may call at any time on any day of the week to transmit a request to "do not send" future facsimiles.

"§ 75-117. Facsimiles to contain identifying material.

(a) It shall be a violation of this Article for any person or entity, if either the person or entity or the recipient is located in the State of North Carolina, to do either of the following:

- (1) Initiate any communication using a telephone facsimile machine that does not clearly mark in a margin at the top or bottom of each transmitted page or on the first page of each transmission the date and time sent; an identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.
- (2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission the date and time it is sent, the identification of the business, other entity, or person sending the message, and the telephone number of the sending machine or of the business, other entity, or person.

(b) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association if all of the following conditions are met:

- (1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.
- (2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.
- (3) The member who is sent the facsimile has not requested that the association stop sending facsimiles.

"§ 75-118. Enforcement.

(a) A person or entity who receives an unsolicited advertisement in violation of this Article may bring any of the following actions in civil court:

- (1) An action to enjoin further violations of this Article by the person or entity who sent the unsolicited advertisement.

(2) An action to recover five hundred dollars (\$500.00) for the first violation, one thousand dollars (\$1,000) for the second violation, and five thousand dollars (\$5,000) for the third and any other violation that occurs within two years of the first violation.

(b) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged in the act or practice, and the court may award reasonable attorneys' fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(c) Actions brought by a person or entity pursuant to this section shall be tried in the county where the plaintiff resides at the time of the commencement of the action.

(d) This section shall not be construed to alter or restrict any remedy a person may have under federal law, including the Junk Fax Prevention Act of 2005, against a person or entity who sends an unsolicited advertisement.

(e) A violation of G.S. 75-116 is a violation of G.S. 75-1.1."

SECTION 2. This act becomes effective September 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:47 a.m. on the 8th day of August, 2006.

H.B. 1155

Session Law 2006-208

AN ACT TO ENSURE THE SAFEST TRANSPORTATION POSSIBLE FOR NORTH CAROLINA PUBLIC SCHOOL STUDENTS INVOLVED IN SCHOOL-SPONSORED TRAVEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-247 reads as rewritten:

"§ **115C-247. Purchase of activity buses by local boards.**

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. ~~The buses.~~

Each local board of education that operates activity buses shall adopt a policy relative to the proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic events during the regular season and playoffs and for travel to other school-sponsored activities.

The provisions of G.S. 115C-42 shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243."

SECTION 2. The Department of Public Instruction, in cooperation with the Department of Transportation, shall develop a program for issuing a statewide permit to commercial motor coach companies that seek to contract with local school systems for the transportation of students, school personnel, and other persons authorized by the school system for school-sponsored trips. This program is intended to provide commercial motor coach companies with a single permit that can be used statewide and will be an alternative to the current system that requires motor coach companies to meet

the varying requirements of each school system that they contract with for such transportation services. The Department of Public Instruction shall review and amend the recommended guidelines and procedures for school charter transportation, adopted by the School Charter Transportation Safety Committee in December 2004, to meet the requirements of the new permit program.

The requirements of the program shall include, but not be limited to, all of the following:

- (1) The motor coach company demonstrates compliance with the Federal Motor Carrier Safety Regulations (FMCSR) as evidenced by a prior on-site examination of its motor carrier operation in which the company received a safety fitness rating of "satisfactory" in accordance with 49 C.F.R. Part 385.
- (2) The previously issued "satisfactory" safety rating is current at the time the local board of education contracts for services.
- (3) The motor coach company has not had an out-of-service order issued against it within the prior 12 months.
- (4) The requirement that the motorcoach companies adhere to the motor vehicle laws of the jurisdiction in which they are operating.
- (5) The collection of a reasonable fee to offset the costs of implementing and maintaining the program.
- (6) The consideration of the needs of schools that serve large populations of students with special needs.

The Department of Public Instruction, in establishing the program, shall consult with the North Carolina State Highway Patrol, the North Carolina School Boards Association, the Federal Motor Carrier Safety Administration, the North Carolina Motorcoach Association, the North Carolina PTA, and other interested parties to discuss the proposed requirements of the program.

The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee by November 15, 2006, on development of the program. The Committee shall report its findings, together with any recommended legislation, including the amount of any reasonable fees, to the 2007 General Assembly upon its convening.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:51 a.m. on the 8th day of August, 2006.

S.B. 1373

Session Law 2006-209

AN ACT TO INCREASE THE FEE FOR A BREAST CANCER AWARENESS SPECIAL PLATE TO SUPPORT SERVICES TO DETECT BREAST CANCER EARLIER; TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING NEW SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, GOLD STAR, GREYHOUND FRIENDS OF NC, KAPPA ALPHA PSI FRATERNITY, LEUKEMIA & LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, NC CHILDREN'S PROMISE, NC STATE PARKS, PRINCE HALL MASON, SUPPORT OUR TROOPS, AND US EQUINE RESCUE LEAGUE; TO ELIMINATE THE

REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE; TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND; TO AUTHORIZE THE DIVISION TO ISSUE AN INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS SPECIAL PLATE TO A SURVIVING SPOUSE; TO REPEAL THE SUNSET ON THE HARLEY OWNERS' GROUP AND ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATES; AND TO AMEND THE RETIRED HIGHWAY PATROL SPECIAL PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

- (1) Friends of the Great Smoky Mountains National Park.
- (2) Rocky Mountain Elk Foundation.
- (3) Blue Ridge Parkway Foundation.
- (4) Friends of the Appalachian Trail.
- (5) NC Coastal Federation.
- (6) In God We Trust.
- (7) Stock Car Racing Theme.
- (8) Buddy Pelletier Surfing Foundation.
- (9) Guilford Battleground Company.
- (10) National Wild Turkey Federation.
- (11) North Carolina Aquarium Society.
- (12) First in Forestry.
- (13) North Carolina Wildlife Habitat Foundation.
- (14) NC Trout Unlimited.
- (15) Ducks Unlimited.
- (16) Lung Cancer Research.
- (17) NC State Parks.
- (18) Support Our Troops.
- (19) US Equine Rescue League.
- (20) Fox Hunting."

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3h) Breast Cancer Awareness. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Early Detection Saves Lives" and a representation of a pink ribbon. The Division must receive 300 or more applications for the plate before it may be developed.

...

(3n) Carolina's Aviation Museum. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

...

(14e) Emergency Medical Technician. – Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(15c) Fox Hunting. – Issuable to the registered owner of a motor vehicle. The plate may bear a phrase and a picture representing fox hunting. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(16b) Greyhound Friends of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Greyhound Friends of North Carolina" and a picture of a greyhound.

...

(16f) Gold Star Lapel Button. – Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(19b) International Association of Fire Fighters. —Issuable to a member of the International Association of Fire Fighters. The plate authorized by this subdivision shall bear the logo of the International Association of Fire Fighters. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

- a. A person who presents proof of active membership in the International Association of Fire Fighters for the year in which the license plate is sought.
- b. The surviving spouse of a person who was a member of the International Association of Fire Fighters, so long as the

surviving spouse continues to renew the plate and does not remarry.

...

(20f) Kappa Alpha Psi Fraternity. – Issuable to the registered owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(22c) Leukemia & Lymphoma Society. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

...

(22k) Lung Cancer Research. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

...

(28k) NC Children's Promise. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "N.C. Children's Promise" and a logo representing the North Carolina Children's Promise organization.

...

(32g) Prince Hall Mason. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

...

(36a) Retired Highway Patrol. – The plate authorized by this subdivision shall bear the phrase "SHP, Retired." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

- a. An individual who has retired from the North Carolina Highway Patrol.
- b. The surviving spouse of a person who had a retired highway patrol plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.
- c. The surviving spouse of a person who qualified for a retired highway patrol plate so long as the surviving spouse applies for the plate within ninety (90) days of the qualifying spouse's death and does not remarry.

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops".

...

(46c) US Equine Rescue League. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear

the phrase "United States Equine Rescue League", and a depiction of two horses in a circle."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of ~~the Congressional Medal of Honor, a Legion of Valor award,~~ a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional ~~Congressional Medal of Honor, Legion of Valor,~~ 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
Coastal Conservation Association	\$30.00
Crystal Coast	\$30.00
El Pueblo	\$30.00
First in Forestry	\$30.00
Historical Attraction	\$30.00
HOMES4NC	\$30.00
In God We Trust	\$30.00
North Carolina 4-H Development Fund	\$30.00
North Carolina Libraries	\$30.00
Personalized	\$30.00
Share the Road	\$30.00
State Attraction	\$30.00
Stock Car Racing Theme	\$30.00
<u>Support Our Troops</u>	<u>\$30.00</u>
Buffalo Soldiers	\$25.00
Collegiate Insignia	\$25.00
Goodness Grows	\$25.00
High School Insignia	\$25.00
Kids First	\$25.00
Olympic Games	\$25.00
National Multiple Sclerosis Society	\$25.00
National Wild Turkey Federation	\$25.00
NC Agribusiness	\$25.00
<u>NC Children's Promise</u>	<u>\$25.00</u>
NC Coastal Federation	\$25.00
Nurses	\$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	\$25.00
Special Olympics	\$25.00
Surveyor Plate	\$25.00
The V Foundation for Cancer Research Division	\$25.00
University Health Systems of Eastern Carolina	\$25.00
Alpha Phi Alpha Fraternity	\$20.00
Animal Lovers	\$20.00
ARC of North Carolina	\$20.00
Audubon North Carolina	\$20.00
Autism Society of North Carolina	\$20.00
Be Active NC	\$20.00
<u>Breast Cancer Awareness</u>	<u>\$20.00</u>

Buddy Pelletier Surfing Foundation	\$20.00
Daughters of the American Revolution	\$20.00
Ducks Unlimited	\$20.00
<u>Greyhound Friends of North Carolina</u>	<u>\$20.00</u>
Guilford Battleground Company	\$20.00
(Effective until June 30, 2006) Harley Owners' Group	\$20.00
Litter Prevention	\$20.00
March of Dimes	\$20.00
NC Trout Unlimited	\$20.00
NC Wildlife Habitat Foundation	\$20.00
Omega Psi Phi Fraternity	\$20.00
<u>Prince Hall Mason</u>	<u>\$20.00</u>
Save the Sea Turtles	\$20.00
Scenic Rivers	\$20.00
School Technology	\$20.00
SCUBA	\$20.00
Soil and Water Conservation	\$20.00
Special Forces Association	\$20.00
Support Public Schools	\$20.00
<u>US Equine Rescue League</u>	<u>\$20.00</u>
Wildlife Resources	\$20.00
Zeta Phi Beta Sorority	\$20.00
<u>Carolina's Aviation Museum</u>	<u>\$15.00</u>
<u>Leukemia & Lymphoma Society</u>	<u>\$15.00</u>
<u>Lung Cancer Research</u>	<u>\$15.00</u>
Shag Dancing	\$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	\$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>	<u>PRTF</u>
Alpha Phi Alpha Fraternity	\$10	\$10	0	0
Animal Lovers	\$10	\$10	0	0
ARC of North Carolina	\$10	\$10	0	0
Audubon North Carolina	\$10	\$10	0	0
Autism Society of North Carolina	\$10	\$10	0	0
Be Active NC	\$10	\$10	0	0
<u>Breast Cancer Awareness</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>

Buddy Pelletier Surfing Foundation	\$10	\$10	0	0
Buffalo Soldiers	\$10	\$15	0	0
<u>Carolina's Aviation Museum</u>	<u>\$10</u>	<u>\$5</u>	<u>0</u>	<u>0</u>
Coastal Conservation Association	\$10	\$20	0	0
Crystal Coast	\$10	\$20	0	0
Daughters of the American Revolution	\$10	\$10	0	0
Ducks Unlimited	\$10	\$10	0	0
El Pueblo	\$10	\$20	0	0
First in Forestry	\$10	\$10	\$10	0
Goodness Grows	\$10	\$15	0	0
<u>Greyhound Friends of North Carolina</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>
Guilford Battleground Company	\$10	\$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	\$10	\$10	0	0
High School Insignia	\$10	\$15	0	0
Historical Attraction	\$10	\$20	0	0
HOMES4NC	\$10	\$20	0	0
In God We Trust	\$10	\$20	0	0
In-State Collegiate Insignia	\$10	\$15	0	0
Kids First	\$10	\$15	0	0
<u>Leukemia & Lymphoma Society</u>	<u>\$10</u>	<u>\$5</u>	<u>0</u>	<u>0</u>
Litter Prevention	\$10	\$10	0	0
<u>Lung Cancer Research</u>	<u>\$10</u>	<u>\$5</u>	<u>0</u>	<u>0</u>
March of Dimes	\$10	\$10	0	0
National Multiple Sclerosis Society	\$10	\$15	0	0
National Wild Turkey Federation	\$10	\$15	0	0
NC Agribusiness	\$10	\$15	0	0
<u>NC Children's Promise</u>	<u>\$10</u>	<u>\$15</u>	<u>0</u>	<u>0</u>
NC Coastal Federation	\$10	\$15	0	0
NC 4-H Development Fund	\$10	\$20	0	0
NC Trout Unlimited	\$10	\$10	0	0
North Carolina Libraries	\$10	\$20	0	0
NC Wildlife Habitat Foundation	\$10	\$10	0	0
Nurses	\$10	\$15	0	0
Olympic Games	\$10	\$15	0	0
Omega Psi Phi Fraternity	\$10	\$10	0	0
Out-of-state Collegiate Insignia	\$10	0	\$15	0
Personalized	\$10	0	\$15	\$5
<u>Prince Hall Mason</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	\$10	\$15	0	0
Save the Sea Turtles	\$10	\$10	0	0
Scenic Rivers	\$10	\$10	0	0
School Technology	\$10	\$10	0	0

SCUBA	\$10	\$10	0	0
Shag Dancing	\$10	\$5	0	0
Share the Road	\$10	\$20	0	0
Soil and Water Conservation	\$10	\$10	0	0
Special Forces Association	\$10	\$10	0	0
Special Olympics	\$10	\$15	0	0
State Attraction	\$10	\$20	0	0
Stock Car Racing Theme	\$10	\$20	0	0
<u>Support Our Troops</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
Support Public Schools	\$10	\$10	0	0
Surveyor Plate	\$10	\$15	0	0
The V Foundation for Cancer Research	\$10	\$15	0	0
University Health Systems of Eastern Carolina	\$10	\$15	0	0
<u>US Equine Rescue League</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>
Wildlife Resources	\$10	\$10	0	0
Zeta Phi Beta Sorority	\$10	\$10	0	0
All other Special Plates	\$10	0	0	0."

SECTION 5. G.S. 20-81.12(b2) is amended by adding a new subdivision to read:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

...

- (1i) North Carolina State Parks. – One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15."

SECTION 6. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b53) Breast Cancer Awareness. – The Division must receive 300 or more applications for a Breast Cancer Awareness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Breast Cancer Awareness plates to Friends for an Earlier Breast Cancer Test, Inc., to support services to detect breast cancer earlier.

(b54) Carolina's Aviation Museum. – The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolina's Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b55) Greyhound Friends of North Carolina. – The Division must receive 300 or more applications for a Greyhound Friends of North Carolina plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Greyhound Friends of

North Carolina plates to the Greyhound Friends of North Carolina, Inc., to be used for the care and upkeep of retired greyhound racers that are awaiting adoption.

(b56) Leukemia & Lymphoma Society. – The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b57) Lung Cancer Research. – The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b58) NC Children's Promise. – The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the North Carolina Children's Promise.

(b59) Prince Hall Mason. – The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b60) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b61) US Equine Rescue League. – The Division must receive 300 or more applications for the US Equine Rescue League plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of US Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines."

SECTION 7. Section 8 of S.L. 2001-498 reads as rewritten:

"SECTION 8. Section 7 of this act becomes effective at the earliest practical date, but no later than January 1, 2003. The remainder of this act is effective when it becomes law. ~~Sections 1(b), 3(b), 4(b), and 6(b) expire on June 30, 2006.~~"

SECTION 8. As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b)

in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. This section expires July 1, 2011.

SECTION 9. The increase in the additional fee for the Breast Cancer Awareness special plate, as amended in Section 3 of this act, becomes effective January 1, 2007, and applies to plates issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

Became law upon approval of the Governor at 9:52 a.m. on the 8th day of August, 2006.

S.B. 522

Session Law 2006-210

AN ACT TO PROVIDE A RECIPROCAL PREFERENCE FOR NORTH CAROLINA FIRMS PROVIDING ARCHITECTURAL, ENGINEERING, SURVEYING, AND CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR PUBLIC PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.31 reads as rewritten:

"§ 143-64.31. **Declaration of public policy.**

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(a1) A resident firm providing architectural, engineering, surveying, or construction management at risk services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

(b) Public entities that contract with a construction manager at risk under this section shall report to the Secretary of Administration the following information on all projects where a construction manager at risk is utilized:

- (1) A detailed explanation of the reason why the particular construction manager at risk was selected.
- (2) The terms of the contract with the construction manager at risk.
- (3) A list of all other firms considered but not selected as the construction manager at risk and the amount of their proposed fees for services.

- (4) A report on the form of bidding utilized by the construction manager at risk on the project.

The Secretary of Administration shall adopt rules to implement the provisions of this subsection including the format and frequency of reporting."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:53 a.m. on the 8th day of August, 2006.

S.B. 1436

Session Law 2006-211

AN ACT TO ALLOW REGIONAL COUNCILS OF GOVERNMENT TO FINANCE REAL PROPERTY ACQUISITIONS AND IMPROVEMENTS AND TO MAKE REVISIONS RELATED TO TAX INCREMENT FINANCING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-475(7a) reads as rewritten:

"§ 160A-475. **Specific powers of council.**

The charter may confer on the regional council any of the following powers:

...

- (7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under G.S. 159-153. A regional council may not exercise the power of eminent domain."

SECTION 2. G.S. 153A-395 is amended by adding a new subdivision to read:

"§ 153A-395. **Powers and duties.**

A regional planning commission may:

...

- (9a) For the purpose of meeting its office space and program needs, acquire real property by purchase, gift, or otherwise, and improve that property. It may pledge real property as security for an indebtedness used to finance acquisition of that property or for improvements to that property, subject to approval by the Local Government Commission as required under G.S. 159-153. It may not exercise the power of eminent domain in exercising the powers granted by this subdivision."

SECTION 3. G.S. 158-7.3(j) reads as rewritten:

"(j) Plan Implementation. – In implementing a development financing plan, a unit may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof. A private agency that enters into a contract with a unit for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

SECTION 4. G.S. 160A-515.1(i) reads as rewritten:

"(i) Plan Implementation. – In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a city for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:54 a.m. on the 8th day of August, 2006.

S.B. 489**Session Law 2006-212**

AN ACT TO AUTHORIZE THE NORTH CAROLINA BOARD OF COSMETIC ART EXAMINERS TO CLARIFY CERTAIN DEFINITIONS UNDER THE NORTH CAROLINA COSMETIC ART ACT, TO APPROVE EXAMINATION FACILITIES, AND TO SET LIMITS FOR FAILED CANDIDATES SEEKING TO RETAKE AN EXAMINATION, AND TO AMEND CERTAIN LICENSURE REQUIREMENTS UNDER THE NORTH CAROLINA COSMETIC ART ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-2 reads as rewritten:**"§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

- (1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.
- (2) Board. – The North Carolina Board of Cosmetic Art Examiners.
- (3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.
- (4) Booth renter. – A person who rents a booth in a cosmetic art shop.
- (5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, or manicuring, including (i) the systematic massaging manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet; feet, (ii) the use of cosmetic chemicals and preparations and antiseptics; (iii) manicuring, including the application of artificial nails; (iv) esthetics; or (v) cutting, coloring, cleansing, arranging, dressing, waving, and marcelling the hair, and the use of electricity for stimulating growth of hair. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.
- (6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.
- (7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

- (8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.
- (8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.
- (9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.
- (10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.
- (11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.
- (11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.
- (13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.
- (14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.
- (15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 2. G.S. 88B-18 reads as rewritten:

"§ 88B-18. Examinations.

(a) ~~Each applicant for any examination shall file an application with the Board, on a form approved by the Board, which shall be verified by the applicant under oath, and the applicant shall pay the required examination fee. Applications shall be filed at least 30 days before the requested examination date.~~

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in ~~the Board's office or in a publicly supported two-year postsecondary educational institution with~~

~~appropriate facilities. The Board shall reimburse an institution, if requested, for the use of its facilities in administering examinations.~~ Board-approved facilities.

(d) An applicant for a ~~cosmetologist~~ cosmetologist, esthetician, manicurist, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 3. G.S. 88B-9 reads as rewritten:

"§ 88B-9. Qualifications for licensing as an esthetician.

The Board shall issue a license to practice as an esthetician to any individual who meets all of the following requirements:

- (1) Successful completion of at least 600 hours of an ~~esthetician~~ esthetics curriculum in an approved cosmetic art school.
- (2) Passage of an examination conducted by the Board.
- (3) Payment of the fees required by G.S. 88B-20."

SECTION 4. G.S. 88B-22 reads as rewritten:

"§ 88B-22. Licenses required; criminal penalty.

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an esthetician or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 5. G.S. 88B-11 reads as rewritten:

"§ 88B-11. Qualifications for licensing teachers.

(a) Applicants for any teacher's license issued by the Board shall meet all of the following requirements:

- (1) Possession of a high school diploma or a high school graduation equivalency certificate.
- (2) Payment of the fees required by G.S. 88B-20.

(b) The Board shall issue a license to practice as a cosmetology teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist license issued by the Board.
- (2) Submits proof of either practice of cosmetic art in a cosmetic art ~~shop~~ shop, or any Board-approved employment capacity in the cosmetic arts industry, for a period equivalent to five years of full-time work immediately prior to application or successful completion of at least

800 hours of a cosmetology teacher curriculum in an approved cosmetic art school.

- (3) Passes an examination for cosmetology teachers conducted by the Board.

(c) The Board shall issue a license to practice as an esthetician teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or an esthetician license issued by the Board.
- (2) Submits proof of either practice as an esthetician in a cosmetic art ~~shop~~ shop, or any Board-approved employment capacity in the cosmetic arts industry, for a period equivalent to three years of full-time work immediately prior to application or successful completion of at least 650 hours of an esthetician teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for esthetician teachers conducted by the Board.

(d) The Board shall issue a license to practice as a manicurist teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

- (1) Holds in good standing a cosmetologist or manicurist license issued by the Board.
- (2) Submits proof of either practice as a manicurist in a cosmetic art ~~shop~~ shop, or any Board-approved employment capacity in the cosmetic arts industry, for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a manicurist teacher curriculum in an approved cosmetic art school.
- (3) Passes an examination for manicurist teachers conducted by the Board."

SECTION 6. G.S. 88B-21(e) reads as rewritten:

"(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, or manicurist, has practiced for at least 10 consecutive years in that profession and is 60 years of age or older does not have to meet the continuing education requirements of this subsection. A licensee who is in active practice as a cosmetologist and, as of October 1, 2004, has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 9:55 a.m. on the 8th day of August, 2006.

S.B. 881**Session Law 2006-213**

AN ACT TO REVISE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT HAVING IN FULL FORCE AND EFFECT A LIABILITY INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-309.2. Insurer shall notify Division of actions on insurance policies.

(a) Notice Required. – An insurer shall notify the Division upon any of the following with regard to a motor vehicle liability policy:

- (1) Issues a new or replacement policy.
- (2) Terminates a policy, either by cancellation or failure to renew, unless the same insurer issues a replacement policy complying with this Article at the same time the insurer terminates the old policy and no lapse in coverage results.
- (3) Reinstates a policy after the insurer has notified the Division of a cancellation or termination.

(b) Time Period. – An insurer shall notify the Division as required by subsection (a) of this section within 20 business days.

(c) Form of Notice. – Any insurer with twenty-five million dollars (\$25,000,000) or more in annual vehicle insurance premium volume shall submit the notices required under this section by electronic means. All other insurers may submit the notices required under this section by either paper or electronic means.

(d) Trade Secret Protection. – The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by an insurer under this section constitutes a designated trade secret under G.S. 132-1.2.

(e) Civil Penalty. – The Commissioner of Insurance may assess a civil penalty of two hundred dollars (\$200.00) against an insurer that fails to notify the Division as required by this section. The Commissioner may waive the penalty if the insurer establishes good cause for the failure."

SECTION 2. G.S. 20-311 reads as rewritten:

"§ 20-311. ~~Revocation of registration when financial responsibility not in effect.~~Action by the Division when notified of a lapse in financial responsibility.

~~Upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, the Division shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle in the year registration has changed for 30 days.~~

~~The vehicle for which registration has been revoked pursuant to this section may be registered at the end of the 30-day revocation period upon certification of financial~~

~~responsibility and payment by the vehicle owner of a fifty dollar (\$50.00) administrative fee in addition to appropriate license fees. In no event may such vehicle be registered prior to payment of the fifty dollar (\$50.00) administrative fee.~~

(a) Action. – When the Division receives evidence, by a notice of termination of a motor vehicle liability policy or otherwise, that the owner of a motor vehicle registered or required to be registered in this State does not have financial responsibility for the operation of the vehicle, the Division shall send the owner a letter. The letter shall notify the owner of the evidence and inform the owner that the owner shall respond to the letter within 10 days of the date on the letter and explain how the owner has met the duty to have continuous financial responsibility for the vehicle. Based on the owner's response, the Division shall take the appropriate action listed:

- (1) Division correction. – If the owner responds within the required time and the response establishes that the owner has not had a lapse in financial responsibility, the Division shall correct its records.
- (2) Penalty only. – If the owner responds within the required time and the response establishes all of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of this section:
 - a. The owner had a lapse in financial responsibility, but the owner now has financial responsibility.
 - b. The vehicle was not involved in an accident during the lapse in financial responsibility.
 - c. The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.
- (3) Penalty and revocation. – If the owner responds within the required time and the response establishes any of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle for the period set in subsection (c) of this section:
 - a. The owner had a lapse in financial responsibility and still does not have financial responsibility.
 - b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.
- (4) Revocation pending response. – If the owner does not respond within the required time, the Division shall revoke the registration of the owner's vehicle for the period set in subsection (c) of this section. When the owner responds, the Division shall take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.

(b) Penalty Amount. – The following table determines the amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three-year period before the date the owner's current lapse began:

<u>Number of Lapses in Previous Three Years</u>	<u>Penalty Amount</u>
<u>None</u>	<u>\$50.00</u>
<u>One</u>	<u>\$100.00</u>
<u>Two or More</u>	<u>\$150.00</u>

(c) Revocation Period. – The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility. The revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner responds.

(d) Revocation Notice. – When the Division revokes the registration of an owner's vehicle, it shall notify the owner of the revocation. The notice shall inform the owner of the following:

- (1) That the owner shall return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.
- (2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.
- (3) That the registration of the vehicle cannot be renewed while the registration is revoked.
- (4) That the owner shall pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(e) Registration After Revocation. – A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner shall pay any penalty assessed, a restoration fee of fifty dollars (\$50.00), and the fee for a registration plate."

SECTION 3. G.S. 20-316 reads as rewritten:

"§ 20-316. Divisional hearings upon lapse of liability insurance coverage.

Any person whose registration plate has been revoked under ~~G.S. 20-309(e) or 20-311~~ may request a hearing. Upon receipt of such request, the Division shall, as early as practical, afford ~~him~~ an opportunity for hearing. ~~Upon such~~ At the hearing the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division shall withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered."

SECTION 4. G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. – All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the Division and those

issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax shall be considered a separate transaction for which one dollar and twenty-seven cents (\$1.27) compensation shall be paid. The performance at the same time of one or more of the remaining transactions listed in this subsection shall be considered a single transaction for which one dollar and forty-three cents (\$1.43) compensation shall be paid.

A transaction is any of the following activities:

- ...
- (7) Receipt of the civil penalty imposed by ~~G.S. 20-309~~ G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
- ..."

SECTION 5. The following statutes are repealed: G.S. 20-309(e), 20-312, and 20-316.1.

SECTION 6. This act becomes effective July 1, 2008, and applies to lapses occurring on or after that date.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 10:00 a.m. on the 8th day of August, 2006.

H.B. 2164

Session Law 2006-214

AN ACT TO AMEND THE AUTHORITY OF SANITARY DISTRICTS TO REQUIRE CONNECTIONS TO WATER AND SEWER SYSTEMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-55 reads as rewritten:

"§ 130A-55. **Corporate Powers.**

A sanitary district board shall be a body politic and corporate and may sue and be sued in matters relating to the sanitary district. Notwithstanding any limitation in the petition under G.S. 130A-48, but subject to the provisions of G.S. 130A-55(17)e, each sanitary district may exercise all of the powers granted to sanitary districts by this Article. In addition, the sanitary district board shall have the following powers:

...

(16) To adopt rules for the promotion and protection of the public health and for these purposes to possess the following powers:

- a. ~~To require any person owning, occupying or controlling improved real property within the district to connect with either or both the water or sewage systems of the district when the local health director, having jurisdiction over the property, determines that the health of the people residing within the district will be endangered by a failure to connect. To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.~~

..."

SECTION 2. This act becomes effective September 1, 2006.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 10:01 a.m. on the 8th day of August, 2006.

S.B. 1862

Session Law 2006-215

AN ACT TO SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS, TO REQUIRE THAT THE NUTRIENT OFFSET PAYMENT FOR NITROGEN BE CALCULATED AS IT WAS PRIOR TO CERTAIN RULE AMENDMENTS, AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE NUTRIENT OFFSET PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B.0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factors for nutrient offset payments are established as follows:

- (1) Eleven dollars (\$11.00) per pound of nitrogen, calculated in accordance with the method used as of 1 January 2006, for determining pounds of nitrogen per acre.
- (2) Eleven dollars (\$11.00) per tenth of a pound of phosphorous.

SECTION 2. Study. – The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to the nutrient offset payment program. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

SECTION 3. Report. – The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 4. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act.

SECTION 5. This act becomes effective 1 August 2006, and applies to all nutrient offset payments, including those set out in 15A NCAC 2B.0240, as adopted by the Environmental Management Commission on 12 January 2006. This act expires 1 September 2007.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 10:02 a.m. on the 8th day of August, 2006.

H.B. 143

Session Law 2006-216

AN ACT TO EXEMPT AGRI-TOURISM ACTIVITIES FROM THE PRIVILEGE TAX ON AMUSEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-40 is amended by adding a new subdivision to read:

"(12) All farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340."

SECTION 2. This act becomes effective January 1, 1999, and applies to activities occurring on or after that date.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 10:02 a.m. on the 8th day of August, 2006.

H.B. 2147

Session Law 2006-217

AN ACT TO REQUIRE STATE AGENCIES TO USE EXISTING PLANS FOR STATE CONSTRUCTION PROJECTS WHERE FEASIBLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-31.1 reads as rewritten:

"§ 143-31.1. **Study-Use of existing plans for State construction projects; study and review of plans and specifications for building, improvement, etc., projects.**

(a) All State agencies shall use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

(b) ~~It shall be the duty and responsibility of the~~The Director of the Budget ~~to shall~~ determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Office of State Budget and Management to be favorable to the letting of construction contracts. The Director of the Budget may, when he considers it in the best interest of the State to do so, terminate design contracts when it is documented that the designer has failed to perform the conditions enumerated in the contract.

Notwithstanding G.S. 143-135, the Director of the Budget may authorize the Department of Health and Human Services and the Department of Correction to use funds necessary for projects that correct deficiencies, improve living conditions, or renovate unneeded patient space for State office space."

SECTION 1.1. If House Bill 914, 2005 Regular Session becomes law, effective July 1, 2007, G.S. 143-341(3) as amended by Section 96 of House Bill 914 reads as rewritten:

'(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

- b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.
- e. To require all State agencies to use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

Except for sub-subdivisions ~~b. and b1.b~~, b1., and e. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11.' "

SECTION 2. G.S. 116-31.11(a) reads as rewritten:

"(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of two million dollars (\$2,000,000) or less:

- (1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- (2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).
- (3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

- (4) Use existing plans and specifications for construction projects, where feasible. Prior to designing a project, the Board shall consult with the Department of Administration on the availability of existing plans and specifications and the feasibility of using them for a project."

SECTION 3. This act becomes effective September 1, 2006, and applies to construction projects on which design is begun after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 10:03 a.m. on the 8th day of August, 2006.

S.B. 927

Session Law 2006-218

AN ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DECLINE TO ACCEPT A NUTRIENT OFFSET PAYMENT FOR PHOSPHOROUS FOR THE TAR-PAMLICO RIVER BASIN IF THE DEPARTMENT FINDS THAT THE PAYMENT IS NOT SUFFICIENT TO COVER THE FULL COSTS OF NUTRIENT REDUCTION MEASURES NEEDED TO COMPLY WITH THE NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY.

The General Assembly of North Carolina enacts:

SECTION 1. If Senate Bill 1862, 2005 Regular Session, becomes law, Senate Bill 1862 shall be amended by adding a new section to read:

"**SECTION 1.1** Notwithstanding 15A NCAC 2B.0240 and Section 1 of this act, the Department of Environment and Natural Resources shall not be required to accept a nutrient offset payment for phosphorous as a means of fulfilling any requirement of the nutrient sensitive waters management strategy for the Tar-Pamlico River Basin if the Department finds that the payment is not sufficient to cover the full costs of nutrient reduction measures needed to comply with the nutrient sensitive waters management strategy. If the Department declines to accept a nutrient offset payment for phosphorous, the Department shall provide an estimate of the full cost of the nutrient reduction measures required for compliance with the nutrient sensitive waters management strategy. The Department may negotiate and enter into contracts to provide nutrient reduction measures needed to fulfill any requirement of the nutrient sensitive waters management strategy for phosphorous for the Tar-Pamlico River Basin based on the full cost of providing the nutrient reduction measures."

SECTION 2. This act becomes effective when Senate Bill 1862 becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 10:04 a.m. on the 8th day of August, 2006.

H.B. 767

Session Law 2006-219

AN ACT ESTABLISHING TARGET INCOMES FOR PUBLIC HOUSING AUTHORITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 157-29(b) reads as rewritten:

"(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

- (1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and
- (2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.
- (3) ~~In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income.~~

(3a) It shall comply with the following targeting requirements:

- a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".
- b. To the extent provided in subdivision (4a) of this subsection, the admission of extremely low-income families to its section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section, "section 8" refers to section 8 of the U.S. Housing Act of 1937 as amended.
- c. If admissions of extremely low-income families to its section 8 voucher program during its fiscal year exceeds seventy-five percent (75%) of the minimum targeting requirement for its section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.
- d. The fiscal year credit for section 8 voucher program admissions that exceeded the minimum section 8 voucher program targeting requirement shall not exceed the lower of the following:
 1. Ten percent (10%) of its waiting list admissions during its fiscal year.
 2. Ten percent (10%) of waiting list admissions to its section 8 tenant-based assistance program during its fiscal year.
 3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.

- (4) ~~An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section.~~
- (4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 10:05 a.m. on the 8th day of August, 2006.

H.B. 1522

Session Law 2006-220

AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(18) is repealed.

SECTION 2. G.S. 105-130.47(i) is repealed.

SECTION 3. G.S. 105-134.6(c)(9) is repealed.

SECTION 4. G.S. 105-151.29(i) is repealed.

SECTION 5. This act is effective for taxable years beginning on and after January 1, 2007.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:54 a.m. on the 8th day of August, 2006.

S.B. 198

Session Law 2006-221

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS TO THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2006.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 6.11.(a)** Section 5.1(c) of S.L. 2005-1 reads as rewritten:

'SECTION 5.1.(c) The Department of Crime Control and Public Safety shall modify the Crisis Housing Assistance Fund (CHAF) to provide money to persons who do not qualify for CHAF assistance solely because they failed to apply for federal assistance through FEMA or the Small Business Administration's (SBA) Real Property Disaster loan program. The Department shall review these persons' applications for CHAF assistance using the same criteria employed by the SBA to determine eligibility for an SBA Real Property Disaster loan. The Up to 110 applicants shall be eligible for

CHAF assistance if it is determined that they would have failed to qualify for assistance under the SBA Real Property disaster loan criteria and that they otherwise meet the criteria for CHAF.'

SECTION 6.11.(b) This section applies to persons applying for Crisis Housing Assistance Fund (CHAF) assistance due to hurricane damage during the summer and fall of 2004.

SECTION 6.11.(c) This section expires on November 1, 2006."

SECTION 2. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 6.17.(a)** G.S. 143-16.3 reads as rewritten:

'§ 143-16.3. No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.

Notwithstanding any other provision of law, no funds from any source, except for gifts, public or private grants, funds allocated from the Repair and Renovations Account in accordance with G.S. 143-15.3A, and funds allocated from the Contingency and Emergency Fund in accordance with G.S. 143-12(b), may be expended for any new or expanded purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period; provided, however, that in the event the Director of the Budget declares that it is necessary to deviate from this provision, he may do so after prior consultation with the Joint Legislative Commission on Governmental Operations. For the purpose of this section, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a bill, amendment, or petition and when any committee of the Senate or the House of Representatives deliberates on that purpose.'

SECTION 6.17.(b) This section is effective when this act becomes law."

SECTION 2A. Notwithstanding Page F-5, Item 37, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated to the Department of Public Instruction for Futures for Kids, Inc., a nonprofit corporation, may be used for operations during the 2006-2007 fiscal year while the corporation develops a plan for consolidation during the 2007-2008 fiscal year with the Pathways Program, which is administered by The University of North Carolina, General Administration. Futures for Kids, Inc., and the Pathways Program shall present a plan for consolidation of the two programs to the Joint Legislative Education Oversight Committee by March 1, 2007.

SECTION 3. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 6.18.** S.L. 2005-255 required the State of North Carolina to convey the property described by that section and to implement the Green Square Project in accordance with the provisions of that act. The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations no later than September 1, 2006, on (i) why the property has not yet been transferred, (ii) why that act has not yet been implemented, and (iii) what the transfer and implementation timetable is."

SECTION 3A. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 6.19.(a)** If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39A, G.S. 143B-426.39B, and G.S. 143B-426.39C as enacted by Section 9 of House Bill 914 are recodified as G.S. 143B-426.39D, G.S. 143B-426.39E, and G.S. 143B-426.39F. The Codifier is authorized to change the references to G.S. 143B-426.39A, G.S. 143B-426.39B, and G.S. 143B-426.39C in G.S. 143B-426.39, G.S. 53-245(b), G.S. 62A-22(d), G.S. 96-6,

G.S. 147-9.3, and G.S. 174-9.4 as amended by sections 8, 17, 19, 23, 112, and 113 to the correct recodified statutory references.

SECTION 6.19.(b) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g) made by Section 6.35 of S.L. 2005-276 is also made to G.S. 143B-426.39D(g), as enacted by Section 9 of House Bill 914 and recodified by Section 6.19(a) of this section.

SECTION 6.19.(c) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39(6) reads as rewritten:

- '(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with ~~G.S. 143-3.2 and G.S. 143-34.1~~, G.S. 143B-426.39E and G.S. 143C-6-6 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.'

SECTION 6.19.(d) To reflect the provisions of G.S. 143-16.6 which was enacted in Section 34.1(d) of S.L. 2005-276, if House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, Article 9 of Chapter 143C, as enacted by Section 3 of House Bill 914, 2005 Regular Session, is amended by adding a new section to read:

'§ 143C-9-3A. 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 6.19.(e) If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-3A, as enacted by subsection (d) of 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. 143C-9-3A as enacted by subsection (b) of 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. 143C-9-3A is repealed, and any assignment made under it is void.

SECTION 6.19.(f) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, Article 9 of Chapter 143C as enacted by Section 3 of House Bill 914, 2005 Regular Session is amended by adding a new section to read:

'§ 143C-3B. JDIG Reserve Fund.'

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52.'

SECTION 6.19.(g) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-3-1 as enacted by Section 2 of House Bill 914, 2005 Regular Session reads as rewritten:

'§ 143C-3-1. Budget estimate for the legislative branch.'

The Legislative ~~Administrative~~ Services Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly.'

SECTION 6.19.(h) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-1-1(b) as enacted by Section 2 of House Bill 914, 2005 Regular Session reads as rewritten:

'(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch.' "

SECTION 3B. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 6.20. There is created in the Office of State Budget and Management a Special Reserve for Lobbying Registration Reform. Of the funds appropriated to the Office of the Secretary of State in S.L. 2005-276 for Lobbyist Registration Enhancement and the funds appropriated in S.L. 2006-66 to the Office of the Secretary of State for Lobbyist Registration Reform, the sum of one hundred thirty-five thousand eight hundred two dollars (\$135,802) in recurring funds and twenty-four thousand dollars (\$24,000) in nonrecurring funds shall be transferred to the Reserve.

After consultation with the Joint Legislative Commission on Governmental Operations, the Director of the Budget may establish two positions and authorize the expenditure of these funds to implement the provisions of House Bill 1843 of the 2005 General Assembly, if enacted."

SECTION 5. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 8.11.(a) G.S. 115D-41 reads as rewritten:

'§ 115D-41. Restrictions—ContractsRestrictions on contracts with local school administrative units; use of community college facilities by public school students pursuant to cooperative programs.

(a) Community college contracts with local school administrative units shall not be used by these agencies to supplant funding for a public school high school teacher providing courses offered pursuant to G.S. 115D-20(4) who is already employed by the local school administrative unit. However, if a community college contracts with a local school administrative unit for a public high school teacher to teach a college level course, the community college shall not generate budget FTE for that course. Its reimbursement in this case shall be limited to the direct instructional costs contained in the contract, plus fifteen percent (15%) for administrative costs. In no event shall a community college contract with a local school administrative unit to provide high school level courses.

(b) Community college facilities that comply with applicable State, county, and local fire codes for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs.'

SECTION 8.11.(b) Part 5 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

'§ 116-44.5. Use of college or university facilities by public school students pursuant to cooperative programs.

The facilities of any constituent institution of The University of North Carolina and the facilities of any private college or university licensed in accordance with G.S. 116-15 that comply with applicable State, county, and local fire codes for those facilities may be used without modification for public school students in joint or cooperative programs such as middle or early college programs and dual enrollment programs.' "

SECTION 5A.(a) S.L. 2006-66 is amended by adding a new section to read:

"SECTION 8.12. The State Board of Community Colleges shall create a consortium of colleges to address the training needs of the motorsports industry members and to direct training programs to meet those needs. The consortium membership shall consist of Catawba Valley Community College, Central Piedmont Community College, Davidson Community College, Forsyth Technical Community College, Guilford Technical Community College, Halifax Community College, Rowan-Cabarrus Technical Community College, and Wilkes Community College. Forsyth Technical Community College shall be the lead community college in the consortium for management and operations purposes. The consortium of community colleges shall focus its training efforts to provide specialized motorsports workforce training and to help create new jobs at the Advanced Vehicle Research Center located in Northampton County.

If the motorsports industry finds that additional training at the university level would be beneficial to the industry, the State Board of Community Colleges may consult with the Board of Governors of The University of North Carolina and the motorsports industry to determine how best to meet that need."

SECTION 5A.(b) If House Bill 1723 of the 2005 Regular Session becomes law, then Section 28 of that act is repealed.

SECTION 5B. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 9.19. G.S. 115C-499.1 reads as rewritten:

'§ 115C-499.1. Definitions.

The following definitions apply to this Article:

- (1) Academic year. – A period of time in which a student is expected to complete the equivalent of at least two semesters' or three quarters' academic work.
- (2) Authority. – The State Education Assistance Authority created by Article 23 of Chapter 116 of the General Statutes.
- (3) Eligible postsecondary institution. – A school that is:
 - a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);
 - b. A community college as defined in G.S. 115D-2(2);~~or~~
 - c. ~~A nonpublic-nonprofit~~ postsecondary institution as defined in G.S. 116-22(1) or ~~116-43.5(a)(1).~~G.S. 116-43.5(a)(1); or
 - d. A postsecondary institution owned or operated by a hospital authority as defined in G.S. 131E-16(14) or school of nursing affiliated with a nonprofit postsecondary institution as defined in G.S. 116-22(1).
- (4) Matriculated status. – Being recognized as a student in a defined program of study leading to a degree, diploma, or certificate at an eligible postsecondary institution.
- (5) Scholarship. – A scholarship for education awarded under this Article.
- (6) Title IV. – Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070, et seq.' "

SECTION 6. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 9.19. Notwithstanding Page F-11, Item 81, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated to the Board of Governors of The University of North Carolina for the 2006-2007 fiscal year to expand the "Future Teachers of North Carolina Scholarship Loan Program" shall be used only for an additional 50 scholarship loans each year rather than 75 scholarship loans."

SECTION 7. Section 10.3(d)(1) of S.L. 2006-66 reads as rewritten:

"SECTION 10.3.(d) Eligibility. – Eligibility for Medicaid shall be determined in accordance with the following:

- (1) 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:

Categorically Needy-WFFA*		Medically Needy	
Family Size	Standard Of Need	Families and Children Income Level	AA,AB,AD*
1	\$4,344	\$2,172	\$2,900
2	5,664	2,832	~~3,900~~ <u>3,800</u>
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 8.(a) G.S. 108A-58.1(d)(1), as enacted by Section 10.5(b) of S.L. 2006-66, reads as rewritten:

"(d) Medical Services. –

- (1) In the case of an institutionalized individual, the transfer of assets penalty applies with respect to nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and to home- or community-based services furnished under the State's Community Alternatives Program waiver pursuant to 42 U.S.C. § 1396n(c) or ~~(d)-(d)~~, and pursuant to the hardship waiver under subsection (k) of this section."

SECTION 8.(b) G.S. 108A-58.1(h)(2), as enacted by Section 10.5(b) of S.L. 2006-66, reads as rewritten:

- "(2) A noninstitutionalized individual is any individual who (i) is not an institutionalized individual, (ii) is an aged, blind, or disabled person who is categorically or medically needy pursuant to 42 C.F.R. § 120 Subpart B, C, or D or a qualified Medicare beneficiary as defined in 42 U.S.C. § 1396d(p)(1), and ~~(3)~~ (iii) is not eligible for medical assistance under this Part based on his or her eligibility for an optional State supplement pursuant to 42 C.F.R. § 435.232."

SECTION 8.(c) G.S. 108A-58.1(j), as enacted by Section 10.5(b) of S.L. 2006-66, reads as rewritten:

"(j) Application to Life Estates and Income Producing Real Property. – The Department of Health and Human Services may apply federal transfer of assets policies in accordance with this section to (i) life estates purchased by or on behalf of the recipient, and (ii) to real property excluded as "income producing", tenancy-in-common, or as nonhomesite property made "income producing." ~~The transfer of assets policy shall apply only to an institutionalized individual or the individual's spouse, as defined in subsection (h) of this section.~~ The Department shall exclude from countable resources any life estate in real property that is in the recipient's home and is measured by the recipient's life. Federal transfer of assets policies applied to income producing real property shall become effective not earlier than October 1, 2001. Federal transfer of assets policies 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 October 1, 2005."

SECTION 9.(a) G.S. 58-50-46, as enacted in Section 10.8 of S.L. 2006-66, is recodified as G.S. 108A-55.4.

SECTION 9.(b) G.S. 108A-55.4(b)(5), as recodified in subsection (a) of this section, reads as rewritten:

- "(5) Agree not to deny a claim submitted by the Division solely on the basis of the date of submission of the claim, the type of format of the

claim form, or a failure to present ~~property~~proper documentation at the point-of-sale that is the basis of the claim, if:

- a. The claim is submitted by the Division within the three-year period beginning on the date on which the item or service was furnished; and
- b. Any action by the Division to enforce its rights with respect to such claim is commenced within six years of the Division's submission of the claim."

SECTION 9.(c) Section 10.8 of S.L. 2006-66 is amended in the first sentence by inserting before the word "Part 1" the words "Effective January 1, 2007,".

SECTION 10. Section 10.26(b) of S.L. 2006-66 reads as rewritten:

"SECTION 10.26.(b) Of the funds appropriated in this act for consultants to aid the Division and LMEs to the Department of Health and Human Services, the sum of two hundred twenty-five thousand dollars (\$225,000) for the 2006-2007 fiscal year shall be used by the Department to enter into one or more ~~personal services~~ contracts to provide technical assistance to Local Management Entities to develop and implement the crisis plans required under subsection (a) of this section. In addition to any other factors the Department determines are relevant when selecting the consultant, the Department shall take into consideration whether an applicant has prior experience evaluating crisis services at a local, regional, and statewide level, prior experience assisting State and local public agencies develop and implement crisis services, and the ability to implement its responsibilities within the time frames established under this section. Funds not expended during the 2006-2007 fiscal year shall not revert to the General Fund but shall remain available for the purposes outlined in this subsection."

SECTION 11. Section 10.26(d) of S.L. 2006-66 is amended by deleting "24-hour beds" and substituting "23-hour beds."

SECTION 12. Section 10.32(b) of S.L. 2006-66 reads as rewritten:

"SECTION 10.32.(b) The Secretary shall review and revise the LME systems management cost model to provide adequate funds for LMEs to fully implement the functions outlined in G.S 122C-115.4(b) as enacted in Section 4 of this act. The Secretary shall consult with the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services prior to implementing a revised cost model.

For the 2006-2007 fiscal year and until the revised cost model is implemented, the Department shall maintain the 2005-2006 level of funding to LMEs for all LME functions except the following:

- (1) Up to thirteen million three hundred thirty-three thousand four hundred ~~eighty-four~~eighty-one dollars (\$13,333,481) for utilization review; and
- (2) Up to twelve million one hundred fifty-six thousand forty-two dollars (\$12,156,042) for claims processing.

Any savings of State appropriations realized from the revised cost model shall be reallocated to State-funded services for mental health, developmental disabilities, and substance abuse services.

Funds withdrawn for LME administrative functions shall be reallocated to other LMEs to be used to provide mental health, developmental disabilities, and substance abuse services. The ten percent (10%) reduction authorized under G.S. 122C-155(a1), as enacted by this section, is in addition to funding limitations of this subsection."

SECTION 13A. Section 10.9D of S.L. 2006-66 reads as rewritten:

"SECTION 10.9D.(a) The General Assembly recognizes the critical need for pharmacy management services to Medicaid recipients enrolled in Medicare Part D. In light of the additional costs to pharmacists that provide pharmacy services to Medicaid recipients enrolled in Medicare Part D, and in light of the fact that federal law does not provide federal matching funds under the Medicaid program for these services, the Department of Health and Human Services shall study strategies for assisting pharmacists in providing these services to Medicaid recipients enrolled in Medicare Part D. In studying the strategies, the Department shall specifically address the special circumstances of pharmacists that provide pharmacy services to long-term care facilities. Among the strategies to be considered are those that address pharmacies adversely affected by the additional costs such that they may remain in business and thus continue to provide pharmacy services throughout the State. As part of this effort, the Department shall also assess the impact of the Deficit Reduction Act of 2005 on the payment for generic drugs under the Medicaid Program. The Department shall report its findings and recommended strategies 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 ~~April~~ February 1, 2007.

SECTION 10.9D.(b) If a decrease in the average manufacturer's price ("AMP") of prescription drugs during the period January 1, 2007, through June 30, 2007, is estimated by the Department to result in average savings to the State Medicaid Program during that period, then the Department shall supplement the dispensing fee established by the General Assembly in this act by an amount calculated to be budget neutral and not to exceed average savings less administrative costs to the State to implement the supplemental fee. The supplemental fee shall be implemented no earlier than January 1, 2007, and no later than June 30, 2007. If an amendment to the State Medicaid Plan is required by the Centers for Medicare and Medicaid ("CMS") in order to implement this subsection, then implementation of this subsection is contingent upon receipt of approval of the State Plan amendment prior to June 30, 2007. If a State Plan amendment is required, the Department shall submit the amendment to CMS not later than 60 days from the date the Department receives information on the AMP. This subsection expires June 30, 2007."

SECTION 13B. Notwithstanding Page G-7, Item 58, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated to the Department of Health and Human Services for Long Term Care Quality Improvement shall be allocated to the Area Agencies on Aging to support eight regional long term care ombudsman positions including benefits and travel and one hundred thousand dollars (\$100,000) for a contract for the Quality Improvement Program authorized in Section 10.40A(p) of S.L. 2005-276. These positions are not State positions.

SECTION 14. Section 14.4(a) of S.L. 2006-66, which amends G.S. 7A-133(a), is amended for Districts 27A and 28 by substituting the following for what appears in that act:

"27A	6 <u>7</u>	Gaston"; and
28	6 <u>7</u>	Buncombe."

SECTION 15. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 14.20.(a) G.S. 7A-806(b) reads as rewritten:

'(b) Election of Officers. – Officers of the Conference are a President, two Vice Presidents, a Secretary, a Treasurer, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual summer conference and take office ~~on July 1~~ immediately following their election.'

SECTION 14.20.(b) The Administrative Office of the Courts may establish up to 10 interpreter positions to replace contract positions with funds appropriated to the Judicial Department for the 2006-2007 fiscal year."

SECTION 16. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 16.11. Section 17.23(h) of S.L. 2005-276 reads as rewritten:

'**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. S.L. 2006-66 is amended by adding a new Part to read:

"PART XVI-B. DEPARTMENT OF JUSTICE

SECTION 16B.1. Notwithstanding G.S. 143-34.1(a1), the Department of Justice may use up to one hundred six thousand five hundred seventy dollars (\$106,570) in receipts in the 2006-2007 fiscal year to establish one Attorney III position in the Department to provide legal services for the Department of Cultural Resources."

SECTION 18. S.L. 2006-66 is amended by adding a new section to read:

"SECTION 17.2A.(a) The State Energy Office shall study the State's ability to respond adequately to an energy emergency or crisis and shall update the North Carolina Energy Emergency Plan consistent with the findings of its study and with the findings of the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery as set out in Section 1 of House Bill 2194 and Senate Bill 1489 of the 2005 Regular Session. As part of this study, the State Energy Office shall:

- (1) Review and recommend the revision of existing energy emergency plans of appropriate State agencies and units of local government or recommend to a particular unit of government that it should develop an energy emergency plan, if it currently has none.
- (2) Clarify the roles and responsibilities among State agencies, federal agencies, and units of local government in the event of an emergency petroleum shortage.
- (3) Review, in consultation with the Office of State Purchase and Contract, the current contracts for fuel for State purchases and

purchases by units of local government and determine whether they adequately minimize the risk that the State and units of local government would experience supply curtailments for their highest fuel needs during an emergency fuel shortage.

SECTION 17.2A.(b) The State Energy Office shall report its findings, recommendations, and its draft updated North Carolina Energy Emergency Plan to the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery no later than November 1, 2006. All recommendations to the Committee shall include a cost estimate of the recommended undertaking.

SECTION 17.2A.(c) Of the funds appropriated to the Department of Administration in this act, the sum of forty thousand dollars (\$40,000) for the 2006-2007 fiscal year shall be used to implement this section."

SECTION 19. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 17.6.** Notwithstanding Page L-3, Item 18, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated to a statewide reserve for pending ethics legislation shall be used to establish up to five positions in the Department of Administration for the North Carolina Board of Ethics and shall be used to implement House Bill 1843, House Bill 1844, or Senate Bill 1694, if either of those bills becomes law."

SECTION 19A. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 17.7.** Notwithstanding page J-5, Item 20, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets dated June 30, 2006, funds appropriated to the Department of Administration, Commission on Indian Affairs Economic Development Initiative in the amount of one hundred seventeen thousand four hundred eleven dollars (\$117,411) are nonrecurring. These funds shall be transferred to the North Carolina Indian Economic Development Initiative, Inc., a nonprofit organization, to create jobs and economic growth in Indian communities."

SECTION 20. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 18.2.(a)** Section 68 of Chapter 830 of the 1987 Session Laws, as reenacted and amended by Section 13 of Chapter 1111 of the 1987 Session Laws, is repealed.

SECTION 18.2.(b) Section 1 of Chapter 1111 of the 1987 Session Laws, as amended by Section 1 of Chapter 35 of the 1989 Session Laws, is repealed.

SECTION 18.2.(c) The number of administrative law judges and employees in the Office of Administrative Hearings are established as follows:

<u>Position</u>	<u>Number</u>
Administrative Law Judge	10
Rules Review Commission	4
Other Employees	31.

SECTION 18.2.(d) Article 60 of Chapter 7A of the General Statutes is amended by adding a new section to read:

'§ 7A-760. Number and status of employees; staff assignments; role of State Personnel Commission.

(a) The number of administrative law judges and employees of the Office of Administrative Hearings shall be established by the General Assembly. The Chief Administrative Law Judge is exempt from provisions of the State Personnel Act as provided by G.S. 126-5(c1)(26). All other employees of the Office of Administrative Hearings are subject to the State Personnel Act.

(b) The Chief Administrative Law Judge shall designate, from among the employees of the Office of Administrative Hearings, the Director and staff of the Rules Review Commission.'

SECTION 18.2.(e) G.S. 126-5(c1) is amended by adding a new subdivision to read:

'(27) The Chief Administrative Law Judge of the Office of Administrative Hearings.'

SECTION 18.2.(f) G.S. 143B-30.1 reads as rewritten:

'§ 143B-30.1. Rules Review Commission created.

(a) The Rules Review Commission is created. The Commission shall consist of 10 members to be appointed by the General Assembly, five upon the recommendation of the President Pro Tempore of the Senate, and five upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

(b) In 1990, two of the appointments made by the General Assembly upon the recommendation of the President of the Senate shall expire June 30, 1991, and two shall expire June 30, 1992. In 1990, two of the appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall expire June 30, 1992, and two shall expire June 30, 1993. Subsequent terms shall be for two years.

(c) Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of six members of the Commission. ~~The Chief Administrative Law Judge, Office of Administrative Hearings, shall be responsible for the hiring and supervision of the Director and staff to the Commission.~~

(d) Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars (\$200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

(e) The Chief Administrative Law Judge, Office of Administrative Hearings, shall assign the staff and designate the Director of the Commission in accordance with G.S. 7A-760. ~~Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Chief Administrative Law Judge, Office of Administrative Hearings. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act.~~

(f) The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review. The Commission may have computer access to the North Carolina Administrative Code to enable the Commission and its staff to view and copy rules in the Code."

SECTION 21.(a) If Senate Bill 774 of the 2005 Regular Session becomes law, Section 21.11 of S.L. 2006-66 is repealed.

SECTION 21.(b) Subsection (a) of this section repeals the amendment made by Section 21.11 of S.L. 2006-66, leaving in effect the identical enactment in Senate Bill 774 of the 2005 Regular Session, as ratified.

SECTION 21A.(a) Section 22.15A(b) of S.L. 2006-66 reads as rewritten:

"SECTION 22.15A.(b) Career-banded classifications approved by the State Personnel Commission on or before June 15, 2006, and for which the agency had begun implementation by that date, may continue to be implemented without suspension as otherwise provided for in this section if:

- (1) It is fully and completely implemented no later than February 1, 2007; and
- (2) It is implemented entirely using technical resources provided by the Office of State Personnel and the affected agency or constituent institution."

SECTION 21A.(b) There is created the Legislative Study Commission on the State Personnel Act ("Commission"). The Commission shall consist of 18 members appointed as follows:

- (1) Six members appointed by the Governor, to include:
 - a. One person who is a current State employee subject to the State Personnel Act and not currently working in human resources management.
 - b. One person who is a current State employee and currently working in human resources management.
 - c. One person having experience and expertise in human resources management in a large private sector organization with greater than 500 employees.
 - d. One person having experience and expertise in human resources management in a large public sector organization with greater than 500 employees.
 - e. Two persons representing the general public.
- (2) Six members appointed by the Speaker of the House of Representatives, to include:
 - a. Four members of the House of Representatives.
 - b. Two persons representing the general public.
- (3) Six members appointed by the President Pro Tempore of the Senate, to include:
 - a. Four members of the Senate.
 - b. Two persons representing the general public.

SECTION 21A.(c) The Commission shall:

- (1) Review Chapter 126 of the General Statutes, the State Personnel Act, to determine whether the Act should be revised or repealed, in whole or in part.
- (2) Consider the efficacy of changes in policy related to the following: classification system, compensation philosophy, salary structure, merit-based pay, pay equity, pay delivery, and performance evaluation.
- (3) Evaluate career banding as an alternative to the traditional classification system, considering career progression salary adjustments as compared to current compensation increase philosophy, government/private industry best practices, and the real and perceived

impact to State employees of moving to a career banding classification system.

- (4) Review any other matter that the Commission finds relevant to its charge.

SECTION 21A.(d) The Commission may provide interim reports and shall provide its final report identifying its findings, recommendations, and legislative proposals by May 1, 2008. The Commission shall terminate upon filing its final report.

SECTION 21A.(e) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Commission. The Commission may contract for consultant services as provided by G.S. 120-32.02. 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. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and the Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. With the permission of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Commission may meet during the regular legislative session. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies. The Commission, while in the discharge of its 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.

SECTION 23. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 22.22.(a)** G.S. 140-14 reads as rewritten:

'§ 140-14. North Carolina State Art Society as ~~membership arm of~~ within the North Carolina Museum of Art; promotion of public appreciation of art; ~~organization of art exhibits, etc.~~

The North Carolina State Art Society, Incorporated, ~~shall be the membership arm of the North Carolina Museum of Art, the means whereby citizens of North Carolina can support their museum through individual or corporate memberships in the Society and through participation in its diverse programs.~~ is administratively located within the North Carolina Museum of Art. It shall be the duty of the North Carolina State Art Society to promote the public appreciation of art and its role in the development of civilization; to organize State and regional ~~art exhibits, including works by contemporary North Carolina artists;~~ arts advocacy initiatives; and to do all other things deemed necessary to advance the objectives of the Society.' "

SECTION 22.22.(b) G.S. 140-5.13(b)(2) reads as rewritten:

'(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 29 members, chosen as follows:

...

- (2) The North Carolina State Art Society, Incorporated, shall elect four members;

....'

SECTION 22.22.(c) G.S. 140-12 reads as rewritten:

'§ 140-12. Department of Administration authorized to provide space for Art Society.

Subject to the approval of the Governor, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the North Carolina State Art Society, Incorporated, space in any of the public buildings in Wake County which may be so used without interference with the conduct of the business of the State. Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.'

SECTION 22.22.(d) G.S. 140-13 reads as rewritten:

'§ 140-13. Audit.

The operations of the North Carolina State Art Society, Inc., shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.'

SECTION 22.22.(e) G.S. 143B-53 reads as rewritten:

'§ 143B-53. Organization of the Department.

The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundredth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Commission, the North Carolina Symphony Society, Inc., the North Carolina State Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973.'

SECTION 22.22.(f) Part 15 of Article 2 of Chapter 143B of the General Statutes reads as rewritten:

'Part 15. North Carolina State Art Society, Incorporated.

'§ 143B-89. North Carolina State Art Society, Incorporated.

The North Carolina State Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, Secretary of Cultural Resources, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named by the Governor shall serve for terms of three years each.'

SECTION 22.22.(g) G.S. 140-5.15(c) reads as rewritten:

'(c) The State-funded portion of the salary of the Director shall be fixed by the General Assembly in the Current Operations Appropriations Act.' "

SECTION 24. S.L. 2006-66 is amended by adding a new section to read:

"**SECTION 22.23.** G.S. 84-20 reads as rewritten:

'§ 84-20. Compensation of councilors.

The members of the Council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation for the time spent in attending meetings an

amount to be determined by the Council, subject to approval of the North Carolina Supreme Court, and shall receive actual expenses of travel and subsistence while engaged in their duties provided that for transportation by use of private automobile the expense of travel shall not exceed ~~the rate per mile allowed by G.S. 138-6. the business standard mileage rate set by the Internal Revenue Service per mile of travel.~~ The Council shall determine per diem and mileage to be paid. The allowance fixed by the Council shall be paid by the secretary-treasurer of the North Carolina State Bar upon presentation of appropriate documentation by each member."

SECTION 27.(a) G.S. 105-134.6(d)(4), as enacted by Section 24.12(a) of S.L. 2006-66, reads as rewritten:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

- (4) A taxpayer whose adjusted gross income (AGI), as calculated under the Code, is less than the amount listed in this subdivision may deduct from taxable income the amount, not to exceed ~~seven hundred fifty dollars (\$750.00),~~ two thousand dollars (\$2,000), contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is ~~one thousand five hundred dollars (\$1,500).~~ four thousand dollars (\$4,000).

Filing Status	AGI
Married, filing jointly	\$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000".

SECTION 27.(b) This section is effective for taxable years beginning on or after January 1, 2007.

SECTION 28. Except as otherwise provided in this act, this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 28th day of July, 2006.

Became law upon approval of the Governor at 3:34 p.m. on the 10th day of August, 2006.

S.B. 2010

Session Law 2006-222

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT AND TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

PART I. AIRCRAFT MECHANICS' LIEN

SECTION 1.1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5."Aircraft Labor and Storage Liens.**"§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

- (1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.
- (2) Lienor. – A person entitled to a lien under this Article.
- (3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.
- (4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"§ 44A-55. Persons entitled to a lien on an aircraft.

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"§ 44A-60. Notice of lien on an aircraft.

(a) The lien under G.S. 44A-55 expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

- (1) The name of the lienor.
- (2) The name of the registered owner of the aircraft, if known.
- (3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.
- (4) A description of the aircraft sufficient for identification.
- (5) The amount for which the lien is claimed.
- (6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____ [aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft

commencing the ____ day of ____, and storage was furnished on the aircraft commencing the ____ day of ____, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of ____; that 120 days have not elapsed since the aircraft was released by the lienor; that the amount the lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is \$ ____ (amount); that no part thereof has been paid except \$ ____ (amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of \$ ____ (amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed) _____ (Lienor)
 Address of Lienor _____

State of North Carolina
 County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].

Date: _____ [Official Signature of Notary]
 _____ [Notary's printed or typed name], Notary Public
 My Commission Expires:[Date]

[Official Seal]

"§ 44A-65. Notice of lien filed by the clerk of court.

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"§ 44A-70. Priority of a lien on an aircraft.

The lien under this Article shall have priority over perfected and unperfected security interests.

"§ 44A-75. Termination of a lien on an aircraft.

Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

"§ 44A-80. Fees.

The clerk of court shall collect fees for filing, copying, and certifying any document under this Article as set forth in G.S. 7A-308.

"§ 44A-85. Enforcement of lien by sale.

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5, except that the three-day time period set forth in G.S. 44A-4(a) for the lienor to file a contrary statement of the amount of the lien at the time of the filing of a complaint by the owner shall be extended to 30 days. An owner may seek immediate possession of an aircraft in accordance with G.S. 44A-4.

"§ 44A-90. Title of purchaser.

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 1.2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

- (1) The reasonable charges for the services and materials; or
- (2) The contract price; or
- (3) One hundred dollars (\$100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 1.3. This part becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

PART II. WINEMAKING ON PREMISES PERMIT

SECTION 2.1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2.2. G.S. 18B-307 reads as rewritten:**"§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

- (1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or
- (2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 2.3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. – \$400.00."

SECTION 2.4. This part is effective when it becomes law.

PART III.

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:35 p.m. on the 10th day of August, 2006.

S.B. 1122**Session Law 2006-223****AN ACT TO CREATE THE LAND AND WATER CONSERVATION STUDY COMMISSION.**

Whereas, North Carolina has more than 3,000 miles of streams that fail to meet State water quality standards; and

Whereas, North Carolina is losing natural areas, historic sites, and agricultural and forestry lands at a rate of over 100,000 acres per year; and

Whereas, North Carolina's waters, open lands, and historic properties are critical to our State's economic future and quality of life; and

Whereas, land costs are increasing rapidly; and

Whereas, Article XIV, Section V of the State Constitution states, "North Carolina must use every appropriate way to preserve as part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands and places of beauty;" and

Whereas, G.S. 113A-241(a) provides, "The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and

private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009."; and

Whereas, traditional methods for funding the State's Clean Water Management Trust Fund, Parks and Recreation Trust Fund, Natural Heritage Trust Fund, Agricultural Development and Farmland Preservation Trust Fund, and economic development efforts related to land and water conservation have failed to keep pace with conservation needs and rapidly rising land costs and are not able to meet the State's conservation goals at current funding levels; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established. – The Land and Water Conservation Commission is hereby established.

SECTION 2. Membership. –The Commission shall consist of 16 members as follows:

- (1) Five members appointed by the President Pro Tempore of the Senate.
- (2) Five members appointed by the Speaker of the House of Representatives.
- (3) The State Treasurer or the State Treasurer's designee.
- (4) The Director of the Governor's Policy Office or the Director's designee.
- (5) The Secretary of Environment and Natural Resources or the Secretary's designee.
- (6) Three representatives from the public at large appointed by the Governor.

SECTION 3. Cochairs. – The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 4. Quorum. – A quorum of the Commission shall consist of nine members.

SECTION 5. Vacancies. – Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 6. Purpose and Duties. – The Commission shall:

- (1) Identify and evaluate the existing sources of State funding for: (i) the public acquisition of land or interests in land to protect drinking water quality and prevent polluted runoff, conserve rivers, wetlands, floodplains, coastal waters, working farms, working forests, local parks, State parks, game lands and other natural areas, urban forests, and land visible from scenic highways in North Carolina; (ii) historic preservation; and (iii) economic and community development tied to land and water conservation and historic preservation.
- (2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive based techniques and management tools used to protect land and water and assess the applicability of such tools and techniques to land conservation in North Carolina.

- (3) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address funding needs and other issues affecting land and water conservation in North Carolina.
- (4) Hold at least three public meetings, including at least one meeting in the Mountains, Piedmont, and the Coastal Plain region of the State to present the draft report and recommendations to the public and user groups.

SECTION 7. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 8. Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work.

SECTION 9. Consultants. – The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 10. Meetings. – The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

SECTION 11. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Commission shall terminate.

SECTION 12. Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 13. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:37 p.m. on the 10th day of August, 2006.

H.B. 1965

Session Law 2006-224

AN ACT TO RESTRICT THE STATUTORY PURPOSES FOR WHICH EMINENT DOMAIN MAY BE USED BY PRIVATE CONDEMNORS, LOCAL PUBLIC CONDEMNORS, AND OTHER PUBLIC CONDEMNORS, AND FOR CERTAIN REVENUE BOND PROJECTS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON EMINENT DOMAIN POWERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-1 reads as rewritten:

"§ 40A-1. Exclusive provisions.

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective July 1, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective July 1, 2006, a local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3(a), (b), (b1), or (c) is not effective for that use or purpose. Provided that, any eminent domain action commenced before

July 1, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided, that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This ~~chapter~~ Chapter shall not repeal any provision of a local act ~~enlarging or~~ limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries."

SECTION 2. G.S. 40A-3 reads as rewritten:

"§ 40A-3. By whom right may be exercised.

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

- (1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
 - a. Not be less than 50 feet nor more than 100 feet in width; and
 - b. Comply with the provisions of G.S. 62-190(b).
 The width of land condemned for any natural gas pipelines shall not be more than 100 feet.
- (2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.
- (3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.
- (4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating,

improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.

- (5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

- (1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.
- (3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

- (7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
- (8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.
- (9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~ Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

- (1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.
- (3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.
- (7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
- (8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part

3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

- (9) Opening, widening, extending, or improving public wharves.
- (10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.
- (11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by ~~other statutes.~~ Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

- (1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.
- (2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.
- (3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.
- (4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.
- (5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.
- (6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
- (7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
- (8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.
- (9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

- (10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
- (11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
- (12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
- (13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter."

SECTION 2.1. G.S. 160A-503 is amended by adding a new subdivision to read:

"(2a) 'Blighted parcel' shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted.'

SECTION 2.2. G.S. 160A-503(2) reads as rewritten:

"(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area ~~nor subject to the power of eminent domain,~~ within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons

having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners."

SECTION 2.3. G.S. 160A-512(6) reads as rewritten:

"§ **160A-512. Powers of commission.**

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

...

- (6) its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment ~~project; project, except that eminent domain may only be used to take a blighted parcel;~~ to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

..."

SECTION 2.4. G.S. 160A-515 reads as rewritten:

"§ 160A-515. Eminent domain.

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter ~~40A~~, 40A, but only where the property to be taken is a blighted parcel."

SECTION 3. G.S. 159-83(a)(1) reads as rewritten:

"(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest. The authority to exercise the power of eminent domain granted in this subdivision shall not apply to economic development projects described in G.S. 159-81(3)m., unless revenue bonds for the economic development project were approved by the Local Government Commission pursuant to G.S. 159-87 prior to July 1, 2006."

SECTION 4. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 3:38 p.m. on the 10th day of August, 2006.

H.B. 2212**Session Law 2006-225**

AN ACT TO ESTABLISH THE LOTTERY OVERSIGHT COMMITTEE, AND TO PROVIDE FOR THE DISTRIBUTION OF UNCLAIMED LOTTERY PRIZES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 18C of the General Statutes is amended by adding a new section to read:

"§ 18C-172. Lottery Oversight Committee.

(a) Creation and Membership. – The Lottery Oversight Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of nine members appointed as provided below. In making appointments, each appointing officer shall select members who have appropriate experience and knowledge of the issues to be examined by the Committee and shall strive to ensure racial, gender, and geographical diversity among the membership.

- (1) Three members shall be appointed by the Speaker of the House of Representatives, at least one being an educator and at least one being a person trained or experienced in financial management.
- (2) Three members shall be appointed by the President Pro Tempore of the Senate, at least one being an educator and at least one being a person trained or experienced in financial management.
- (3) Three members shall be appointed by the Governor, at least one being an educator and at least one being a person trained or experienced in financial management.

(b) Terms. – Terms on the Committee are for three years and begin on January 1, except the terms of the initial members, which begin on appointment. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(c) Purpose and Powers. – The Committee shall:

- (1) Review whether expenditures of the net revenues of the Lottery have been in accordance with Article 7 of this Chapter, and study ways to ensure that net proceeds from the Lottery will not be used to supplant education funding but to provide additional funding for education.
- (2) Receive and review reports submitted to the General Assembly pursuant to Chapter 18C of the General Statutes.
- (3) Study other Lottery matters as the Committee considers necessary to fulfill its mandate.

(d) Reports. – The Committee shall report its analysis and any findings and recommendations to the General Assembly by September 15 of each year. The Committee may make interim reports to the General Assembly regarding the expenditure of net Lottery revenues.

(e) Organization. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

(f) Funding. – From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Committee. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5.

(g) Staff. – The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Director of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

SECTION 2. G.S. 18C-115 reads as rewritten:

"§ 18C-115. Reports.

The Commission shall send quarterly and annual reports on the operations of the Commission to the Governor, State Treasurer, the Lottery Oversight Committee, and to the General Assembly. The reports shall include complete statements of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including the occurrence of any audit."

SECTION 3. Section 31.1(ii) of S.L. 2005-276 is repealed.

SECTION 4. G.S. 18C-132(b) reads as rewritten:

"(b) 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.~~this Chapter."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:39 p.m. on the 10th day of August, 2006.

S.B. 1479**Session Law 2006-226**

AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT AND TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 59B.**"Uniform Unincorporated Nonprofit Association Act.****"§ 59B-1. Short title.**

This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act.

"§ 59B-2. Definitions.

In this Chapter:

- (1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.
- (2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.
- (3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"§ 59B-3. Supplementary general principles of law and equity.

Principles of law and equity supplement this Chapter unless displaced by a particular provision of it.

"§ 59B-4. Title to property; choice of law.

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State.

"§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

"§ 59B-6. Statement of authority as to real property.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

- (1) The name of the nonprofit association.
- (2) Reserved for future codification purposes.
- (3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.
- (4) That the association is an unincorporated nonprofit association.
- (5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.
- (6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

"§ 59B-7. Liability of members or other persons.

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.

(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(c) Reserved for future codification purposes.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.

(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association.

"§ 59B-8. Capacity to assert and defend; standing.

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association.

"§ 59B-9. Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit association, or a person authorized to participate in the management of the affairs of the nonprofit association.

"§ 59B-10. Disposition of personal property of inactive nonprofit association.

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:

- (1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or
- (2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

"§ 59B-11. Appointment of agent to receive service of process.

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.

(b) A statement appointing an agent must set forth all of the following:

- (1) The name of the nonprofit association.

- (2) Reserved for future codification purposes.
- (3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.
- (4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.

(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.

(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.

(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
(1)	<u>Statement appointing an agent to receive service of process</u>	<u>\$5.00</u>
(2)	<u>Amendment of statement appointing an agent</u>	<u>5.00</u>
(3)	<u>Cancellation of statement appointing an agent</u>	<u>5.00</u>
(4)	<u>Agent's statement of resignation</u>	<u>No fee</u>

(g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

"§ 59B-12. Claim not abated by change.

A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

"§ 59B-13. Venue.

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides.

"§ 59B-14. Uniformity of application and construction.

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it."

SECTION 2.(a) G.S. 39-24 and G.S. 39-25 are repealed.

SECTION 2.(b) G.S. 39-26 and G.S. 39-27 are recodified as G.S. 59B-15(a) and (b), respectively. As recodified by this act, G.S. 59B-15 reads as rewritten:

"§ 59B-15. Effect as to conveyances by trustees; trustees; prior deeds validated.

(a) ~~Nothing in this Article shall be deemed in any manner to change Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches or other voluntary organizations under Chapter 61 of the General Statutes where such the land is conveyed to and held by such the trustees.~~

(b) All deeds heretofore executed in conformity with this Article before the effective date of this Chapter in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real estate held by such organizations. estate."

SECTION 3. G.S. 1-69.1 reads as rewritten:

"§ 1-69.1. Unincorporated associations and partnerships; suit by or against.

(a) Except as provided in subsection (b) of this section:

- (1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may hereafter sue or be sued under the name by which they are commonly known and called, or under which they are doing business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.
- (2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.
- (3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege the specific location of the recordation required by G.S. 66-68.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section."

SECTION 4. G.S. 47C-3-101 reads as rewritten:

"§ 47C-3-101. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners, or following termination of the condominium, of all persons entitled to distributions of proceeds under G.S. 47C-2-118. The association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit association."

SECTION 5. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 6. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 7. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Unincorporated Nonprofit Association Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

PART II. TECHNICAL CORRECTIONS.

SECTION 8. G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons 65~~72~~ years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 10. G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse~~, intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less~~, less; or an offense under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old~~, old; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

- (1) Chlamydia;
- (2) Gonorrhea;
- (3) Hepatitis B;
- (3a) Herpes;
- (4) HIV; and
- (5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 11. G.S. 41-47(c) reads as rewritten:

"(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written ~~notice~~ notice, addressed to the registering entity, from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article."

SECTION 12. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

- (1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.
- ...
- (5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.
- (6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 13. G.S. 45-38 reads as rewritten:

"§ 45-38. Recording of foreclosure.

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of the original parties to the original instrument foreclosed, and the recording data for the instrument foreclosed. A notice of ~~forfeiture~~ foreclosure shall be indexed by the register of deeds in accordance with ~~G.S. 161-14.1~~ G.S. 161-14.1."

SECTION 14.(a) G.S. 47C-3-116(e) reads as rewritten:

"(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or ~~G.S. 47F-4-117~~ G.S. 47C-4-117."

SECTION 14.(b) G.S. 47C-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS"**."

SECTION 15.(a) G.S. 47F-1-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and ~~G.S. 47C-3-121~~ G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These

sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections."

SECTION 15.(b) G.S. 47F-3-121(2)b. reads as rewritten:

"b. For restrictions registered on or after October 1, 2005, the restriction shall be written on the first page of the instrument or conveyance in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in the instrument or conveyance. The restriction shall be construed to regulate or prohibit the display of political signs only if the restriction specifically states: **"THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE POLITICAL SIGNS".**"

SECTION 16.(a) G.S. 55-11-04(b) reads as rewritten:

"(b) If a merger is consummated without approval of the subsidiary corporation's shareholders, the ~~parent~~ surviving corporation shall, within 10 days after the effective date of the merger, notify each shareholder of the subsidiary corporation as of the effective date of the merger, that the merger has become effective."

SECTION 16.(b) G.S. 55-11-05(d) reads as rewritten:

"(d) In the case of a merger ~~or share exchange~~ pursuant to G.S. 55-11-07 or ~~G.S. 55-11-09~~, a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and ~~(b)~~ (a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable.

SECTION 16.(c) G.S. 55A-11-06(c) reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares~~ memberships of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 16.(d) G.S. 57C-9A-02(a2) reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)~~ (1a) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 17. G.S. 58-47-140 reads as rewritten:

"§ 58-47-140. Other provisions of this Chapter.

The following provisions of this Chapter apply to workers' compensation self-insurance groups that are subject to this Article:

G.S. 58-1-10, 58-2-45, 58-2-50, 58-2-70, 58-2-100, 58-2-105, 58-2-155, 58-2-161, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-81, 58-3-100, 58-3-120, 58-6-25, 58-7-21, 58-7-26, 58-7-30, 58-7-33, 58-7-73, and Articles 13, 19, 30, 33, 34, and 63 of this Chapter apply to groups. Chapter."

SECTION 18. G.S. 90-270.67 reads as rewritten:

"§ 90-270.67. Definitions.

As used in this Article, unless the context clearly requires a different meaning:

- (1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.
- (1a) Board. – The North Carolina Board of Occupational Therapy.
- (1b) Examining body. – The National Board for Certification in Occupational Therapy.
- (2) Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.
- (3) Occupational therapy assistant. – An individual licensed in good standing to assist in the practice of occupational therapy under this Article, who performs activities commensurate with his or her education and training under the supervision of a licensed occupational therapist.
- (4) ~~"Occupational therapy"~~ means a Occupational therapy. – A health care profession providing evaluation, treatment and consultation to help individuals achieve a maximum level of independence by developing skills and abilities interfered with by disease, emotional disorder, physical injury, the aging process, or impaired development. Occupational therapists use purposeful activities and specially designed orthotic and prosthetic devices to reduce specific impairments and to help individuals achieve independence at home and in the work place.
- (5) Person. – Any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this Article."

SECTION 19. G.S. 90B-9 reads as rewritten:

"§ 90B-9. Renewal of certificates and licenses.

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each certificate or license, the Board shall mail a notice and application for renewal to the certificate holder or licensee. Prior to the expiration date, the application shall be returned properly completed, together with a renewal fee established by the Board pursuant to ~~G.S. 90B-6.2(a)(5)~~ G.S. 90B-6.2(a)(4) and evidence of completion of the continuing education requirements established by the Board pursuant to G.S. 90B-6(g), upon receipt of which the Board shall renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in ~~G.S. 90B-6.2(a)(6)~~ G.S. 90B-6.2(a)(5).

(c) A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in ~~G.S. 90B-6.2(a)(7)~~ G.S. 90B-6.2(a)(6).

and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she shall not be subject to payment of renewal fees while temporarily retired. In order to reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2."

SECTION 20. G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

~~Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.~~

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

SECTION 21. G.S. 113-270.3(d) reads as rewritten:

"(d) Any individual who possesses any of the lifetime sportsman licenses established by G.S. 113-270.1D(b) may engage in specially regulated activities without the licenses required by subdivisions (1), (2), (3), and (5) of subsection (b) of this section. Any individual possessing an annual sportsman license established by G.S. 113-270.1D(a) or a lifetime or annual comprehensive hunting license established by G.S. 113-270.2(c)(2) or (5) may engage in specially regulated activities without the licenses required by subdivisions ~~(1) and (3)~~ (1), (3), and (5) of subsection (b) of this section."

SECTION 22. G.S. 115C-499.3(a) reads as rewritten:

"(a) Subject to the amount of net income available under G.S. 18C-164(b)(2), 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."

SECTION 23.(a) G.S. 120-4.21(c), as it applies to members retiring before September 1, 2005, reads as rewritten:

"(c) ~~Limitations.~~ Limitations Applicable to Members Retiring Before September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his "highest annual salary"."

SECTION 23.(b) G.S. 120-4.21(c), as it applies to members retiring on or after September 1, 2005, is recodified as G.S. 120-4.21(d) and reads as rewritten:

"(d) ~~Limitations.~~ Limitations Applicable to Members Retiring on or After September 1, 2005. – In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of the member's "highest annual 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 24.(a) G.S. 130A-309.10(f)(7) reads as rewritten:

"(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~of the disposal of~~ on disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

SECTION 24.(b) This section becomes effective October 1, 2009.

SECTION 25.(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%).

~~in full-time capacity that exceeds fifty percent (50%) of the applicable workweek."~~

SECTION 25.(b) This section becomes effective June 30, 2007.

SECTION 26. The catch line of G.S. 158-33 reads as rewritten:

"§ 158-33. **Creation of ~~Global TransPark Development Zone~~North Carolina's Eastern Region.**"

SECTION 27.(a) The introductory language of Section 5 of S.L. 2005-123 reads as rewritten:

"**SECTION 5.** G.S. 47-46.1 ~~and G.S. 47-46.2 read~~ reads as rewritten:"

SECTION 27.(b) This section becomes effective October 1, 2005.

SECTION 28. S.L. 2005-123 is amended by adding a new section to read:

"**SECTION 9.1.** The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 29. Section 3 of S.L. 2005-127 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. For each water and sewer authority organized under Article 1 of Chapter ~~162~~ 162A of the General Statutes, Section 2 of this act applies on the first day of the fiscal year of the authority that begins on or after the date this act becomes effective."

SECTION 30. Section 1 of S.L. 2005-133 reads as rewritten:

"**SECTION 1.** Under the Occupational Safety and Health Act of North Carolina, the name of the Safety and Health Review Board is changed to the North Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes is authorized to substitute the term "Commission" for the term "Board" wherever that term appears in the General Statutes in relation to the Act. The Revisor of Statutes is also authorized to insert the words "North Carolina Occupational" in front of the phrase "Safety and Health Review Commission" wherever that phrase appears in the General Statutes in relation to the Act."

SECTION 31.(a) Section 7(a) of S.L. 2005-192 is codified as G.S. 36C-11-1106, and reads as rewritten:

"§ **36C-11-1106. Application to existing relationships.**

(a) ~~Section 2 of this act becomes effective January 1, 2006, and except~~Except as otherwise provided in ~~Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, this Chapter applies to (i) all trusts created before, on, or after ~~that date;~~January 1, 2006; (ii) all judicial proceedings concerning trusts commenced on or after ~~that date;~~January 1, 2006; and (iii) judicial proceedings concerning trusts commenced before ~~that date;~~January 1, 2006, unless the court finds that application of a particular provision of ~~Chapter 36C of the General Statutes~~this Chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of ~~Chapter 36C of the General Statutes~~this Chapter does not apply and the superseded law applies.

(b) ~~Except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, any rule of construction or presumption provided in ~~Chapter 36C of the General Statutes~~this Chapter applies to trust instruments executed before ~~the effective date of Section 2 of this act~~January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust or unless application of that rule of construction or presumption would impair substantial rights of a beneficiary. ~~Except as otherwise provided in Chapter 36C of the General Statutes, as enacted by Section 2 of this act,~~this Chapter, an act done before ~~the effective date of Section 2 of this act~~January 1, 2006, is not affected by ~~Chapter 36C of the General Statutes~~this Chapter. If a right is acquired, extinguished, or barred upon the expiration

of a prescribed period that has commenced to run under any other statute before the effective date of Section 2 of this act, January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded."

SECTION 31.(b) Section 7(b) of S.L. 2005-192 reads as rewritten:

"**SECTION 7.(b)** ~~Section 1 and Sections 3 through 5~~ Sections 1 through 5 of this act become effective January 1, 2006. The remainder of this act is effective when it becomes law."

SECTION 31.(c) The Revisor of Statutes is authorized to cause to be printed along with G.S. 36C-11-1106, as enacted by this section, all relevant portions of the Official Commentary to this section of the Uniform Trust Code and all explanatory comments of the drafters as the Revisor deems appropriate.

SECTION 32. Section 7 of S.L. 2005-351 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2005, and applies to powers of attorney created ~~before and on, before, or~~ after that date."

SECTION 33. S.L. 2006-11 is amended by adding a new section to read:

"**SECTION 2.1.** The Revisor of Statutes shall cause to be printed along with G.S. 25-9-705, as amended by this act, all explanatory comments of the drafters of this act as the Revisor deems appropriate."

SECTION 34. Sections 1, 2, 3, 4, 5, 6, and 7 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 3:40 p.m. on the 10th day of August, 2006.

H.B. 1025

Session Law 2006-227

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"§ 18B-307. Manufacturing offenses.

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

- (1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or
- (2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding two new subdivisions to read:

"(38) Winemaking on Premises permit – \$400.00.

(39) Wine shipper packager permit – \$100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees ~~made~~ pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

- (1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).
- (2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.
- (3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.
- (4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts."

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

"§ 18B-1001.2. Additional wine shipping requirements.

(a) A wine shipper permittee shall:

- (1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.
 - (2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.
- (b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine."

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1001.3. Authorization of wine shipper packager permit.

The holder of a wine shipper packager permit may provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging."

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats~~, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-108 reads as rewritten:

"§ 18B-108. Sales on trains.

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 9. G.S. 18B-1001(16) reads as rewritten:

"§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

- (16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes."

SECTION 10. G.S. 18B-203(a) reads as rewritten:

- "(a) Powers. – The Commission shall have authority to:

...

- (19) Recognize the holder of a wine importer permit or nonresident wine vendor permit as a primary American source of supply for the wine of a winery. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 11. G.S. 18B-1106 reads as rewritten:

"§ 18B-1106. Authorization of wine importer permit.

- (a) Authorization. – The holder of a wine importer permit may:
- (1) Import fortified and unfortified wines from outside the United States in closed containers;
 - (2) Store those wines;
 - (3) Sell those wines to wine wholesalers for purposes of resale.
- (b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter.
- (c) The holder of a wine importer permit may import and sell to wholesalers only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written

contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 12. G.S. 18B-1107 reads as rewritten:

"§ 18B-1107. Authorization of wine wholesaler permit.

- (a) Authorization. – The holder of a wine wholesaler permit may:
- (1) Receive, possess and transport shipments of fortified and unfortified ~~wine;~~wine. The wine must be received from one of the following:
 - a. A primary American source of supply for that wine as recognized by the Commission or as verified by the wholesaler.
 - b. A licensed North Carolina wholesaler who received the wine from a primary American source of supply and with whom the second wholesaler has a subcontracting agreement for distribution of the wine.
 - c. Another wholesaler from whom the purchasing wholesaler is purchasing the wholesaler's business or from whom the wholesaler is purchasing the brand or distribution rights for the wine being received.
 - d. Another wholesaler who also has distribution rights for the wine being received and from whom the wholesaler is acquiring the wine in order to address a temporary inventory shortage.
 - (2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC ~~laws;~~laws.
 - (3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of ~~Revenue;~~Revenue.
 - (4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission;~~Commission.
 - (5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

(b) Distribution Agreements. – Wine distribution agreements are governed by Article 12 of this Chapter."

SECTION 13. G.S. 18B-1114 reads as rewritten:

"§ 18B-1114. Authorization of nonresident wine vendor permit.

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a nonresident wine vendor permit may sell, deliver, and ship into this State only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a nonresident wine vendor must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 14. Effective July 1, 2007, 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 Commerce two hundred thousand dollars (\$200,000) from 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 Commerce under this section shall not exceed five hundred thousand dollars (\$500,000) per fiscal year. The Department of Commerce shall allocate the funds received under this section to the North Carolina Wine and 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 Commerce under this section that are not expended by June 30 of any fiscal year ~~may do~~ not revert to the General Fund, but shall remain available to the Department for the uses set forth in this section."

SECTION 15. Except as otherwise provided herein, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:41 p.m. on the 10th day of August, 2006.

S.B. 1381

Session Law 2006-228

AN ACT TO REPEAL THE NORTH CAROLINA BRIDGE AUTHORITY AND THE AUTHORIZATION FOR THE DEPARTMENT OF TRANSPORTATION TO ISSUE A PRIVATE PILOT TOLL PROJECT LICENSE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, TO AUTHORIZE THE NORTH CAROLINA TURNPIKE AUTHORITY TO CONVERT A PORTION OF INTERSTATE 540 UNDER CONSTRUCTION IN WAKE AND DURHAM COUNTIES TO A TOLL FACILITY, TO CLARIFY WHICH PROJECTS THE TURNPIKE AUTHORITY IS AUTHORIZED TO CONSTRUCT, TO REQUIRE LEGISLATIVE APPROVAL FOR ADDITIONAL TURNPIKE AUTHORITY CONSTRUCTION PROJECTS, AND TO GRANT THE TURNPIKE AUTHORITY RIGHT OF ENTRY FOR SURVEYS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6F of Chapter 136 of the General Statutes is repealed.

SECTION 2. Article 6G of Chapter 136 of the General Statutes is repealed.

SECTION 3. G.S. 136-89.187 reads as rewritten:

"§ 136-89.187. Conversion of free highways prohibited.

The Authority Board is prohibited from converting any segment of the nontolled State Highway System to a toll ~~facility~~ facility, except for a segment of Interstate 540 under construction as of July 1, 2006, located in Wake and Durham Counties, and extending from I-40 southwest to N.C. 55. No segment may be converted to a toll route pursuant to this section unless first approved by the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) of the area in which that segment is located."

SECTION 4. G.S. 136-89.188 reads as rewritten:**"§ 136-89.188. Use of revenues.**

(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for Authority administration costs; Turnpike Project development, right-of-way acquisition, construction, operation, and maintenance; and debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.

(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.

(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, toll revenues generated from a converted segment of the State highway system previously planned for operation as a nontoll facility shall only be used for the funding or financing of the right-of-way acquisition, construction, expansion, operations, maintenance, and Authority administration costs associated with the converted segment or a contiguous toll facility."

SECTION 5. G.S. 136-89.183 (a)(2) reads as rewritten:

"(2) To study, plan, develop, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain ~~up to nine Turnpike Projects. One of the Turnpike Projects shall be located in whole or in part in a county with a population equal to or greater than 650,000 persons, according to the latest decennial census, and one Turnpike Project shall be located in a county or counties that each have a population of fewer than 650,000 persons, according to the latest decennial census. One of the Turnpike Projects shall be a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia.~~ the following projects:

a. Triangle Parkway.

b. Gaston East-West Connector.

c. Monroe Connector.

d. Cape Fear Skyway.

e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia.

f. I-540 in Wake and Durham Counties.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project."

SECTION 6. G.S. 136-89.194 is amended by adding a new subsection to

read:

"(d) Entry for Surveys. – The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:42 p.m. on the 10th day of August, 2006.

H.B. 1523

Session Law 2006-229

AN ACT TO INCREASE THE AMOUNT OF THE PENALTIES THAT MAY BE ASSESSED FOR VIOLATION OF THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-126(d) reads as rewritten:

- "(d) (1) A civil penalty of not more than ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000) for a minor development violation and ~~two thousand five hundred dollars (\$2,500)~~ ten thousand dollars (\$10,000) for a major development violation may be assessed by the Commission against any person who:
- a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
 - b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.
 - c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.
 - d. Violates a rule of the Commission implementing this Article.
- (2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
- (3) ~~The Commission may assess the penalties provided for in this subsection.~~ The Commission shall notify a person who is assessed a penalty or investigative costs by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest the assessment of a penalty or investigative costs by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay ~~a penalty~~, any civil penalty or investigative cost assessed under this subsection, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three

years after the date the final agency decision was served on the violator.

- (4) In determining the amount of the ~~penalty~~ civil penalty, the Commission shall consider ~~the degree and extent of harm caused by the violation and the cost of rectifying the damage~~ the following factors:
- a. The degree and extent of harm, including, but not limited to, harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
 - b. The duration and gravity of the violation;
 - c. The effect on water quality, coastal resources, or public trust uses;
 - d. The cost of rectifying the damage;
 - e. The amount of money saved by noncompliance;
 - f. Whether the violation was committed willfully or intentionally;
 - g. The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority; and
 - h. The cost to the State of the enforcement procedures.
- (4a) The Commission may also assess a person who is assessed a civil penalty under this subsection the reasonable costs of any investigation, inspection, or monitoring that results in the assessment of the civil penalty. For a minor development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars (\$1,000), whichever is less. For a major development violation, the amount of an assessment of investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars (\$2,500), whichever is less.
- (5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. Section 1 of this act becomes effective December 1, 2006, and applies to violations and offenses committed on or after that date. Section 2 of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 3:43 p.m. on the 10th day of August, 2006.

H.B. 749

Session Law 2006-230

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO CERTAIN HIGHWAY FINANCING AGREEMENTS, TO REQUIRE AGREEMENTS INVOLVING DEPARTMENT FUNDS TO BE APPROVED BY THE BOARD OF TRANSPORTATION, AND TO PROVIDE THAT REPLACEMENT INSPECTION STICKERS FOR USE ON A REPLACED WINDSHIELD ARE NOT SUBJECT TO THE INSPECTION STICKER FEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 136-18 reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation ~~shall be~~ is vested with the following powers:

...

- (39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation."

SECTION 1.(b) G.S. 136-89.183(a)(17) reads as rewritten:

- "(17) To enter into partnership agreements, agreements with the Department of Transportation, agreements with political subdivisions of the State, and agreements with private entities, and to expend such funds as it deems necessary, pursuant to such agreements, for the purpose of financing the cost of acquiring, constructing, equipping, operating, or maintaining any Turnpike Project. An agreement entered under this subdivision requires the concurrence of the Board of Transportation if the Department of Transportation is a party to the agreement."

SECTION 1.(c) G.S. 143B-350(f) reads as rewritten:

"(f) Duties of the Board. – The Board of Transportation ~~shall have~~ has the following duties and powers:

- (1) To formulate policies and priorities for all modes of transportation under the Department of ~~Transportation; Transportation.~~
- (2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the ~~Department; Department.~~
- (3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various ~~alternatives; alternatives.~~
- (4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the ~~changes; changes.~~
- (5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to ~~it; it.~~
- (6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the ~~Department; Department.~~

- (7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be ~~available~~available.
- (8) To approve all highway construction ~~programs~~programs.
- (9) To approve all highway construction projects and construction plans for the construction of ~~projects~~projects.
- (10) To review all statewide maintenance ~~functions~~functions.
- (11) To award all highway construction ~~contracts~~contracts.
- (12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent ~~domain~~domain.
- (12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State.
- (13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department."

SECTION 2. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. – When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

<u>Type</u>	<u>Inspection</u>	<u>Sticker</u>
Safety Only	\$ 8.25	\$0.85
Emissions and Safety	23.50	6.50.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for an inspection sticker does not apply to a replacement inspection sticker for use on a windshield replaced by a business registered with the Division pursuant to G.S. 20-183.6. The fee for inspecting after-factory tinted windows shall be ten dollars (\$10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee.

The inspection fee for an emissions and safety inspection set out in this subsection is the maximum amount that an inspection station or an inspection mechanic may charge for an emissions and safety inspection of a vehicle. An inspection station or an inspection mechanic may charge the maximum amount or any lesser amount for an emissions and safety inspection of a vehicle. The inspection fee for a safety only inspection set out in this subsection may not be increased or decreased. The sticker fees set out in this subsection may not be increased or decreased."

SECTION 3. Section 1 of this act becomes effective August 1, 2006. Section 2 of this act becomes effective July 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 3:45 p.m. on the 10th day of August, 2006.

S.B. 1621

Session Law 2006-231

AN ACT TO AUTHORIZE ADDITIONAL SPECIAL INDEBTEDNESS FOR THE CONSTRUCTION OF UP TO FIVE YOUTH DEVELOPMENT CENTERS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR THE PURCHASE OF STATE GAME LANDS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR A PARKING FACILITY IN DOWNTOWN RALEIGH; AND TO EXEMPT SALES OF TIMBER FROM THE SERVICE CHARGE IMPOSED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of S.L. 2004-179 reads as rewritten:

"SECTION 1.2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~thirty-five million dollars (\$35,000,000)~~forty-two million dollars (\$42,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. 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 constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars (\$13,000,000) may be issued or incurred before July 1, 2005."

SECTION 2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars (\$20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. 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 costs of purchasing the land described in this section.

SECTION 3. G.S. 143-64.05 reads as rewritten:

"§ 143-64.05. ~~Definitions.~~Service charge; receipts.

(a) The State agency for surplus property may assess and collect a service charge for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property and for the transfer or sale of recyclable material. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

SECTION 4. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars (\$20,000,000) to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. 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 capital facility costs of the project described in this section.

SECTION 5. The Department of Administration shall report to the Joint Legislative Commission on Governmental Operations no later than September 1, 2006, a description of how the parking structure described in Section 4 of this act fits with the Green Square Project authorized in S.L. 2005-255. The Department may combine this report with other reports required under law on the Green Square Project.

SECTION 6. Section 1 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 3:49 p.m. on the 10th day of August, 2006.

S.B. 2009

Session Law 2006-232

AN ACT TO ALLOW CAPITAL LEASE FINANCING FOR PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 115C is amended by adding a new section to read:

"§ 115C-531. Capital leases of school buildings and school facilities.

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

(1) Capital lease. – A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. – The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. – Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. – The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars (\$300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. – A capital lease may not contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. – No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. – A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. – Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar (\$500,000) threshold applies.

(h) No Agreements on Student Assignment. – A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected. – The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real

property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.

"§ 115C-532. Additional provisions applicable to build-to-suit capital leases.

(a) Definitions. – The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

- (1) Build-to-suit capital lease. – A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars (\$300,000).
- (2) Prime contractor. – A contractor who contracts directly with the private developer or the private developer's construction manager at risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions. – A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. – Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

- (1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.
- (2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by an engineer, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services. – A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

- (1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.
- (2) The private developer or its construction manager at risk may prequalify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.
- (3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant to G.S. 143-128.2, and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.
- (4) A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk and any contractor may negotiate and reach agreement with the successful bidder on modifications to all

aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

- (5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. – Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

- (1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.
- (2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. – Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. – In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

- (1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.
- (2) Facility programming, planning, and design, including both architectural and engineering services.
- (3) Qualification and prequalification of contractors and subcontractors.
- (4) Construction and construction management.
- (5) Financing.
- (6) Facility maintenance and repairs.
- (7) Energy usage guarantees.
- (8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.
- (9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit. – A private developer shall provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period."

SECTION 2. G.S. 143-129(e) is amended by adding a new subdivision to read:

"(e) Exceptions. – The requirements of this Article do not apply to:

...

(12) Build-to-suit capital leases with a private developer under G.S. 115C-532."

SECTION 3. This act is effective when it becomes law and is repealed effective July 1, 2011.

In the General Assembly read three times and ratified this the 18th day of July, 2006.

Became law upon approval of the Governor at 2:00 p.m. on the 12th day of August, 2006.

H.B. 966

Session Law 2006-233

AN ACT TO PROVIDE FOR THE DISCLOSURE OF CANDIDATE-SPECIFIC COMMUNICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22G.

"Candidate-Specific Communications.

"§ 163-278.100. Definitions.

As used in this Article, the following terms have the following definitions:

- (1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:
 - a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
 - b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.
 - c. Is targeted to the relevant electorate.
- (2) The term "candidate-specific communication" does not include any of the following:
 - a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

- b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
 - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
 - d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
 - e. An electioneering communication as defined in Article 22E of this Chapter.
- (3) The term "disclosure date" means either of the following:
- a. The first date during any calendar year when a candidate-specific communication is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars (\$10,000).
 - b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for that calendar year.
- (4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 2,500 or more individuals in the district in the case of a candidacy for General Assembly.
- (5) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

"§ 163-278.101. Disclosure of candidate-specific communications.

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

- (1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.
- (2) The principal place of business of the entity incurring the expense if the entity is not an individual.

- (3) The amount of each expense incurred of more than one thousand dollars (\$1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.
- (4) The candidates in the candidate-specific communications that are identified or are to be identified.
- (5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars (\$1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. – It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

"§ 163-278.102. Penalties.

The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 2. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22H.

"Mass Mailings and Telephone Banks: Candidate-Specific Communications.

"§ 163-278.110. Definitions.

As used in this Article, the following terms have the following definitions:

- (1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:
 - a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
 - b. Is made in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.
 - c. Is targeted to the relevant electorate.
- (2) The term "candidate-specific communication" does not include any of the following:
 - a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
 - b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
 - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely

- promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.
 - e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
 - f. An electioneering communication as defined in Article 22F of this Chapter.
 - g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.
- (3) The term "disclosure date" means either of the following:
- a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars (\$10,000).
 - b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars (\$10,000) since the most recent disclosure date for that calendar year.
- (4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.
- (5) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.
- (6) The term "targeted to the relevant electorate" means:
- a. With respect to a statewide race:
 - 1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or
 - 2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.
 - b. With respect to a race for the General Assembly:
 - 1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or
 - 2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

- (7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

"§ 163-278.111. Disclosure of candidate-specific communications.

(a) Statement Required. – Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. – Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

- (1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.
- (2) The principal place of business of the entity incurring the expense if the entity is not an individual.
- (3) The amount of each expense incurred of more than one thousand dollars (\$1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.
- (4) The candidates in the candidate-specific communications that are identified or are to be identified.
- (5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars (\$1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. – It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

"§ 163-278.112. Penalties.

The State Board of Elections has the same authority to compel from any organization covered by this Article the disclosures required by this Article that the Board has to compel from a political committee the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 4. This act becomes effective January 1, 2007.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 2:01 p.m. on the 13th day of August, 2006.

H.B. 88**Session Law 2006-234**

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO EXTEND FILING FEE PROVISIONS TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be either:

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ~~ten-two~~ percent ~~(10%)~~ (2%) of the entire vote cast in the State for Governor or for presidential electors; or
- (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party."

SECTION 2. G.S. 163-97 reads as rewritten:

"§ 163-97. Termination of status as political party.

When any political party fails to ~~poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election,~~ meet the test set forth in G.S. 163-96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter."

SECTION 3. G.S. 163-98 reads as rewritten:

"§ 163-98. General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ~~ballots~~ ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates ~~for State, congressional, and national offices~~ in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of ~~registered voters in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held.~~ voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1."

SECTION 6. G.S. 163-114 reads as rewritten:

"§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Vice President	
Presidential elector or alternate elector	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
Any elective State office	
United States Senator	
A district office, including:	Appropriate district executive committee of political party in which vacancy occurs
Member of the United States House of Representatives	
District Attorney	
State Senator in a multi-county senatorial district	
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and

the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year."

SECTION 7. This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

Became law upon approval of the Governor at 2:04 p.m. on the 13th day of August, 2006.

S.B. 1487

Session Law 2006-235

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ACCEPT, IN ADDITION TO EXAMINATIONS CONDUCTED BY THE BOARD, THE RESULTS OF OTHER BOARD-APPROVED REGIONAL OR NATIONAL INDEPENDENT THIRD-PARTY CLINICAL EXAMINATIONS OF APPLICANTS SEEKING A LICENSE TO PRACTICE AS A DENTAL HYGIENIST, AND AUTHORIZING THE BOARD TO CHARGE THE ACTUAL COST OF THE THIRD-PARTY TESTING SERVICE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-223(a) reads as rewritten:

"(a) The Board is authorized and empowered to:

- (1) Conduct examinations for licensure,
- (2) Issue licenses and provisional licenses,
- (3) Issue annual renewal certificates, ~~and~~
- (4) Renew expired ~~licenses~~, licenses, and
- (5) Contract with a regional or national testing agency to conduct clinical examinations. Prior to entering a contract with a regional or national testing agency, the Board shall evaluate the agency based on the following criteria:

- a. The number of states that recognize the results of the testing agency's examination.
- b. The cost to the applicant of the examination.
- c. How long the testing agency has been conducting examinations.
- d. Whether the examination includes procedures performed on human subjects as part of the assessment of clinical competencies."

SECTION 2. G.S. 90-224 reads as rewritten:

"§ 90-224. Examination.

(a) The applicant for licensure must be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or unit authorized to issue the same, and be a graduate of a program of dental hygiene in a school or college approved by the Board.

(b) The Board shall have the authority to establish in its rules and regulations:

- (1) The form of application;
- (2) The time and place of examination;
- (3) The type of examination;
- (4) The qualifications for passing the examination.

(b1) The Board also may grant a license to an applicant who is found to have passed an examination given by a Board-approved regional or national dental hygiene testing agency, provided that the Board deems the regional or national examination to be substantially equivalent to or an improvement upon the examination given by the Board, and the applicant meets the other qualifications set forth in this Article.

(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints 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 the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 3. G.S. 90-232 reads as rewritten:

"§ 90-232. Fees.

(a) In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

- (1) Each applicant for examination\$350.00
- (2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State

- by mailing such notice to the last address of record with
the Board of each such dental hygienist 250.00
- (3) Each restoration of license.....150.00
- (4) Each provisional license 150.00
- (5) Each certificate of license to a resident dental hygienist
desiring to change to another state or territory 50.00
- (6) Annual fee to be paid upon license renewal to assist in
funding programs for impaired dental hygienists.....80.00
- (7) Each license by credentials..... 1,500.

(b) In all instances where the Board uses the services of a regional or national testing agency for preparation, administration, or grading of examinations, the Board may require applicants to pay the actual cost of the testing agency in lieu of the fee authorized in subdivision (a)(1) of this section.

(c) In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

SECTION 4. The North Carolina State Board of Dental Examiners shall continue to conduct clinical examinations for applicants seeking a license to practice dental hygiene until at least September 30, 2007. No applicant for a dental hygiene license shall be required to take a Board-approved regional or national independent third-party clinical examination prior to September 30, 2007.

SECTION 5. Notwithstanding any provision to the contrary, the North Carolina State Board of Dental Examiners may accept any application for the dental hygiene clinical examination to be conducted on June 8, 2006, if the application was received on or before March 31, 2006.

SECTION 6. This act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:06 p.m. on the 13th day of August, 2006.

H.B. 643

Session Law 2006-236

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO PERMIT ENCROACHMENT OF AIRSPACE ABOVE STATE ROAD 1250, SPRINGFIELD ROAD, NEAR ROCKY MOUNT FOR THE CONSTRUCTION OF A MATERIAL CONVEYANCE SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Transportation is hereby authorized to permit private use and encroachment upon the airspace above State Road 1250, Springfield Road, near the City of Rocky Mount, for the purpose of construction of a material conveyance system, provided, in the opinion of the Department of Transportation, such material conveyance system will not unreasonably interfere with or impair the property rights or easements of abutting owners nor unreasonably interfere with or obstruct the public use of State Road 1250, Springfield Road. This encroachment shall be subject to all other rules, regulations, and conditions of the

Department of Transportation for encroachments. The location, plans, and specifications for the material conveyance system shall be approved by the Department.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 2:06 p.m. on the 13th day of August, 2006.

H.B. 859

Session Law 2006-237

AN ACT TO AUTHORIZE THE ADOPTION OR AMENDMENT OF A TRANSPORTATION CORRIDOR OFFICIAL MAP BY THE WILMINGTON URBAN AREA MPO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-44.50(a) reads as rewritten:

"(a) A transportation corridor official map may be adopted or amended by any of the following:

- (1) The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.
- (4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.
- (5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

- (1) The governing board of the city, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the

map on the proposed map or amendment. Notice of the hearing shall be provided:

- a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.
 - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.
 - c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.
 - d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.
- (2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.
 - (3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 2:08 p.m. on the 13th day of August, 2006.

H.B. 1099

Session Law 2006-238

AN ACT TO CLARIFY THAT A LOCAL GOVERNMENT, COMMISSION, AUTHORITY, OR BOARD MAY CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO SATISFY THE REQUIREMENTS FOR CERTIFICATION OF LOCAL PROGRAMS FOR APPROVAL OF THE CONSTRUCTION OR ALTERATION OF THE DISTRIBUTION SYSTEM OF A PROPOSED OR EXISTING PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317 reads as rewritten:

"§ 130A-317. Department to provide advice; submission and approval of public water system plans.

(a) The Department shall advise all persons and units of local government locating, constructing, altering or operating or intending to locate, construct, alter or operate a public water system of the most appropriate source of water supply and the best practical method of purifying water from that source having regard to the present and prospective needs and interests of other persons and units of local government

which may be affected. The Department shall also advise concerning accepted engineering practices in the location, construction, alteration and operation of public water systems.

(b) All persons and units of local government constructing or altering a public water system shall give prior notice and submit plans, specifications and other information to the Department. The Commission shall adopt rules providing for the amount of prior notice required to be given and the nature and detail of the plans, specifications and other information required to be submitted. The Commission shall take into consideration the complexity of the construction or alteration which may be involved and the resources of the Department to review the plans, specifications and other information. The Department shall review the plans, specifications and other information, and notify the person, Utilities Commission and unit of local government of compliance or lack of compliance with applicable statutes and rules of the Commission.

(c) No person or unit of local government shall begin construction or alteration of a public water system or award a contract for construction or alteration ~~unless~~unless all of the following conditions are met:

- (1) The plans for construction or alteration have been prepared by an engineer licensed by this ~~State~~State.
- (2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water ~~rules~~rules.
- (3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, county or regional ~~system~~system.
- (4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water ~~system~~and system.
- (5) The Department has approved the plans and specifications.

(d) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own approval program in lieu of State approval of water system plans required in subsection (c) of this section for construction or alteration of the distribution system of a proposed or existing public water system, subject to the prior certification of the Department. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where water service is already being provided to the permit applicant by the municipality or connection to the municipal water system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where water service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of an approval program and statement submitted by any local government, commission, authority, or board, the Department shall certify any local program ~~that~~that meets all of the following conditions:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this Article, and the standards and rules adopted pursuant to this ~~Article~~Article.

- (2) Provides that the Department receives notice and a copy of each application for approval and that the Department receives copies of approved ~~plans;~~plans.
- (3) Provides that plans and specifications for all construction and alterations be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State;~~State.
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process;~~process.
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program;~~program. A local government, commission, authority, or board may either employ an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State or contract with an engineer licensed under Chapter 89C of the General Statutes to practice as a professional engineer in the State in order to provide for adequate engineering staff under this subdivision.
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system;~~system.
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the public water ~~system;~~system.
- (8) Provides that an approved system, as constructed or altered, will be capable of compliance with the drinking water ~~rules; and~~rules.
- (9) Is approved by the Department as adequate to meet the requirements of this Article and any applicable rules adopted pursuant to this Article.

(e) The Department may deny, suspend, or revoke the certification of a local program upon a finding that a violation of the provisions in subsection (d) of this section has occurred. A local government administering an approval program shall be given notice that there has been a tentative decision to deny, suspend, or revoke certification and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged. If a violation of the provisions in subsection (d) of this section presents an imminent hazard, certification may be suspended or revoked immediately. The Department shall give notice of the immediate suspension or revocation and notice that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes where the decision may be challenged.

(f) Notwithstanding any other provisions of ~~this subsection,~~subsection (d) of this section, if the Department determines that a public water system is violating plan approval requirements of a local program and that the local government has not acted to enforce those approval requirements, the Department may, after written notice to the local government, take enforcement action in accordance with the provisions of this Article."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:12 p.m. on the 13th day of August, 2006.

S.B. 2043

Session Law 2006-239

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A NATIONAL LICENSING SYSTEM AND DATABASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.05 reads as rewritten:

"§ 53-243.05. Qualifications for licensure; issuance.

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- (1) The applicant's name and address and social security number.
- (2) The applicant's form and place of organization, if applicable.
- (3) The applicant's proposed method of and locations for doing business, if applicable.
- (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business;
 - (iii) any felony convictions.
- (5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.
- (6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the managing principal or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check constitutes grounds for the Commissioner to deny licensure to the applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

- (1) Be at least 18 years of age.
- (2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

- (1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision.
- (1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:
 - a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.
 - b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.
 - c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.
 - d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.
- (2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.
- (3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

- (4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee of ~~not to exceed one thousand dollars (\$1,000)~~ one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker or mortgage banker or ~~fifty dollars (\$50.00)~~ sixty-seven dollars and fifty cents (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement from a qualified lender showing a net worth of two hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond required.

(g) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall, upon payment of the applicable fee, meet the qualifications for licensure as a loan officer subject to the provisions of subsection (i) of this section.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee of ~~not to exceed one hundred dollars (\$100.00)~~ one hundred twenty-five dollars (\$125.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant. In addition, for an applicant qualifying as an exclusive mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage banker relationship is in the public interest."

SECTION 2. G.S. 53-243.06 reads as rewritten:

"§ 53-243.06. License renewal; termination.

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by

compliance with subsection (b1) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks as the Commissioner may require, a renewal fee as follows:

- (1) Licensed mortgage bankers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00) and one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) for each branch office.
- (2) Licensed mortgage brokers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00) and one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) for each branch office. Licensed exclusive mortgage brokers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00).
- (3) Licensed loan officers shall pay an annual fee of not to exceed fifty dollars (\$50.00) sixty-seven dollars and fifty cents (\$67.50).

(b) If a mortgage banker or mortgage broker license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is not renewed prior to the applicable expiration date, then an additional fifty dollars (\$50.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(b1) When required by the Commissioner, each individual described in G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal history record check and a set of his or her fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by which he or she is employed, over which he or she has control, or as to which he or she is the current or proposed managing principal or a current or proposed branch manager.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

SECTION 3. Article 19A of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"§ 53-243.17. Participation in national mortgage licensing system; licensing proprietary software.

(a) The Commissioner of Banks is authorized to participate in the formation and operation of a centralized and automated licensing system and data depository funded by State mortgage regulators and law enforcement agencies. Pursuant to this authority, the Commissioner may:

- (1) Cause funds of the Office of Commissioner of Banks to be applied to the initial capitalization, organizational expenses, and operating expenses of a limited liability company, nonprofit corporation or

- foundation, or other entity created to operate the licensing system and data depository and to serve as a manager or director of the entity;
- (2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements necessary to the organization and operation of the entity and the licensing system and data depository; and
- (3) Take such further actions as are reasonably necessary to give effect to the provisions of this section.

(b) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

(c) Notwithstanding any other provision of this section, the Commissioner retains full authority and discretion under this Article to license mortgage brokers, mortgage bankers, loan officers, and limited loan officers and to enforce this Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

"§ 53-243.18. Payment of fees.

Payment of fees specified in this Article shall be made to the Office of Commissioner of Banks or, at the election of the Commissioner, to a national mortgage licensing system, agency, or enterprise designated by the Commissioner."

SECTION 4. The amount set as the maximum amount that may be charged for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

SECTION 5. This act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:15 p.m. on the 13th day of August, 2006.

H.B. 2699

Session Law 2006-240

AN ACT TO MAKE CHANGES TO THE VISION CARE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 130A-440.1 reads as rewritten:

"§ 130A-440.1. ~~Comprehensive eye examination required.~~Early Childhood Vision Care.

(a) Vision Screening Required for Children Entering Kindergarten. – Every child in this State entering kindergarten in the public schools, beginning with the 2007-2008 school year, shall obtain a vision screening in accordance with vision screening standards adopted by the Governor's Commission on Early Childhood Vision Care. Within 180 days of the start of the school year, the parent of the child shall present to the school principal or the principal's designee certification that the child has, within the past 12 months, obtained vision screening conducted by a licensed physician, optometrist, physician assistant, nurse practitioner, registered nurse, orthoptist, or a vision screener certified by Prevent Blindness North Carolina, or a comprehensive eye examination performed by an ophthalmologist or optometrist. The health assessment transmittal form required pursuant to G.S. 130A-440 qualifies as certification that the child has obtained the required vision screening. All providers conducting vision

screening shall provide each parent in writing the results of the vision screening on forms bearing the signature of the provider supplied to the provider by the Governor's Commission on Early Childhood Vision Care. The provider shall also orally communicate this information to the parent and shall take reasonable steps to ensure that the parent understands the information communicated. In the instance where a child enters the first grade without having been enrolled in a kindergarten program requiring a vision screening, the requirements for vision screening under this subsection shall apply.

(a1) Comprehensive Eye Examination. – For children who receive and fail to pass a vision screening as required under subsection (a) of this section, a comprehensive eye examination is required. If a public school teacher, administrator, or other appropriate school personnel has reason to believe that a child enrolled in kindergarten through third grade is having problems with vision, the school personnel may recommend to the child's parent that the child have a comprehensive eye examination. Notification to the parent shall also inform the parent that funds may be available from the Governor's Commission on Early Childhood Vision Care to pay providers for the examination, including corrective lenses.

~~(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 be conducted by a duly licensed optometrist or ophthalmologist. The comprehensive eye examination conducted pursuant to this section shall consist of a complete and thorough examination of the eye and shall include: human visual system that includes an evaluation, determination, and diagnosis of:~~

- (1) Measurement of visual acuity;
- (2) Ocular alignment and motility;
- (3) Depth perception – stereopsis;
- (4) Fusion;
- (5) Slit lamp examination of the lid margins, conjunctivae, cornea, anterior chamber, iris, and crystalline lens;
- (6) Examination of the ocular adnexa, the anterior segment, and pupils;
and
- (7) Cycloplegic refraction and dilated fundus examination.
- ~~(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.~~ is not a comprehensive eye examination for purposes of this section.

(c) The results of a comprehensive eye examination conducted under this section shall be included on the ~~The comprehensive eye examination transmittal form developed by the Commission pursuant to G.S. 143B-216.75~~ and 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. The provider shall present a signed transmittal form to the parent upon completion of the examination. The parent shall submit the transmittal form to the school in accordance with this section.

(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.

(f) No child shall be excluded from attending school for a parent's failure to obtain a comprehensive eye examination required under this section. If a parent fails or refuses to obtain a comprehensive eye examination or to provide the certification of a comprehensive eye examination, the school shall send a written reminder to the parent of required eye examinations and shall include information about funds that may be available from the Governor's Commission on Early Childhood Vision Care.

(g) In adopting standards for vision screening under this section and as required under G.S. 130A-440, the Commission shall take into account the resources necessary to comply with the standards and, if standards will require additional resources, shall mitigate the impact on resources without compromising vision screening effectiveness.

(h) As used in this section, the term "parent" means the parent, guardian, or person standing in loco parentis."

SECTION 1.(b) G.S. 130A-440 reads as rewritten:

"(b) A health assessment shall include a medical history and physical examination with screening for vision and hearing and, if appropriate, testing for anemia and tuberculosis. Vision screening shall be conducted in accordance with G.S. 130A-440.1. The health assessment may also include dental screening and developmental screening for cognition, language, and motor function."

SECTION 2.(a) G.S. 143B-216.75 reads as rewritten:

"(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~~ 10 members appointed as follows:

(1) ~~Two optometrists and two ophthalmologists;~~ Four optometrists, two ophthalmologists, and one general pediatrician or a family physician who provides services to children, each of whom is licensed to practice in this State, and one school nurse who is certified by the Prevent Blindness North Carolina Board, appointed by the Governor; ~~Governor.~~ Among the optometrists and ophthalmologists appointed by the Governor, one shall be a currently serving member of the Prevent Blindness North Carolina Board;

- (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—~~Establishment and 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~~section, including the development of a comprehensive eye examination transmittal form required under G.S. 130A-440.1.

The Commission shall develop alternative ways for providing services to children who qualify for the Program when funding for Program services has been exhausted.

The Commission shall prepare written information for providers conducting vision screening. The written information shall state, in effect: 'Vision screening is not a substitute for a comprehensive eye examination.' The Commission shall provide copies of this information to providers so that the provider may give a copy to the parent, guardian, or person standing in loco parentis."

SECTION 2.(b) The Governor's Commission on Early Childhood Vision Care shall work with the Department of Public Instruction to establish procedures for identifying and referring children who need vision screening or a comprehensive eye examination as required by G.S. 143B-216.75.

SECTION 2.(c) The Department of Health and Human Services, Division of Public Health, shall study and determine the methodology of compiling data on the number of children who received comprehensive eye examinations, the types of problems found, and treatments provided, and shall report its findings to the Governor's Commission on Early Childhood Vision Care, the Joint Legislative Health Care Oversight Committee, 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 July 1, 2007.

SECTION 2.(d) Section 10.59F(b) of S.L. 2005-276, as amended by Section 20(b) of S.L. 2005-345, is repealed.

SECTION 3. Funds appropriated to the Department of Health and Human Services, Division of Public Health, for the 2006-2007 fiscal year shall be used to reimburse providers for comprehensive eye examination services, including corrective lenses, provided to eligible families. The Division of Public Health shall work with the Governor's Commission on Early Childhood Vision Care to establish procedures for reimbursing providers. Eligibility requirements for reimbursement shall be as provided

under G.S. 143B-216.75. The Governor's Commission on Early Childhood Vision Care shall establish procedures to inform parents about applying and qualifying for vision care services.

SECTION 4. The Department of Health and Human Services may use up to five percent (5%) of the funds appropriated for the Vision Care Program for the 2006-2007 fiscal year for Program operations and Commission expenses.

SECTION 5. The Governor's Commission on Early Childhood Vision Care may adopt temporary rules in accordance with G.S. 150B-21.1 to implement this act.

SECTION 6. Children who have received vision screenings prior to the availability of forms developed by the Governor's Commission on Early Childhood Vision Care in accordance with G.S. 130A-440.1 shall be deemed to have obtained the screening required under G.S. 130A-440.1, as amended by this act.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:18 p.m. on the 13th day of August, 2006.

H.B. 2882

Session Law 2006-241

AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION, AND CLARIFYING A GENERAL CONTRACTING EXCEPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-10(c) reads as rewritten:

"(c) If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of ~~30~~90 days thereafter, and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board: Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until said applicant's license is reinstated as provided in this Article."

SECTION 2. G.S. 87-1.1 reads as rewritten:

"§ 87-1.1. Exception for licensees under Article 2 or 4.

G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the General Statutes-Statutes, G.S. 87-43 shall not apply to a licensee under Article 2 of this Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under Article 4 of this Chapter of the General Statutes when the licensee is bidding and contracting directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the

State Licensing Board of General Contractor's rules; and (ii) the total amount of the general contracting work so classified does not exceed a percentage of the total bid price pursuant to rules established by the ~~Board~~ Board; and (iii) a licensee with the appropriate license under Article 2 or Article 4 of this Chapter performs all work that falls within the classifications in Article 2 and Article 4 of this Chapter."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:19 p.m. on the 13th day of August, 2006.

H.B. 2885

Session Law 2006-242

**AN ACT RELATING TO THE FILING PERIOD FOR EMPLOYERS TO PROTEST
UNEMPLOYMENT INSURANCE CLAIMS.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-15(b)(2) reads as rewritten:

"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 15 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 10 45 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the Commission as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 2. This act becomes effective October 1, 2006, and applies to claims filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:20 p.m. on the 13th day of August, 2006.

H.B. 2894

Session Law 2006-243

AN ACT TO CLARIFY THE APPLICATION OF THE NORTH CAROLINA CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTERFUGES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

- (1) Consumer loans in North Carolina are regulated by the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes. The North Carolina Consumer Finance Act requires consumer finance lenders to be licensed and, under G.S. 53-173, authorizes interest rates of up to thirty-six percent (36%) on loans of three thousand dollars (\$3,000) or less.
- (2) Some lenders have attempted to evade the restrictions of the North Carolina Consumer Finance Act by offering cash advances in the form of instant cash rebates or other guises. These cash advance transactions are typically offered in conjunction with the sale of Internet access, telephone time units, catalog certificates, or the use of office equipment, when in fact the sale of the goods or services is a pretext for the making of a loan.
- (3) North Carolina courts have declared some of these transactions to be unlawful, but new schemes continue to be devised in order to circumvent the lending laws of North Carolina and to avoid regulation by the Commissioner of Banks.
- (4) It is the intent of the General Assembly that G.S. 53-166(a) should be construed broadly to prohibit illicit lending schemes and to clarify the devices, subterfuges, and pretenses that are prohibited under G.S. 53-166(b), as amended by Section 2 of this act.

SECTION 2. G.S. 53-166 reads as rewritten:

"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. – No person shall engage in the business of lending in amounts of ten thousand dollars (\$10,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter ~~24,24~~ 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but

shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – The provisions of subsection (a) of this section ~~shall apply~~ apply to any person who seeks to avoid its application by any device, ~~subterfuge~~ subterfuge, or pretense whatsoever. Devices, subterfuges, and pretenses include any transaction in which a cash rebate or other advance of funds is offered and all of the following apply:

- (1) The cash advance is made contemporaneously with the transaction or soon thereafter.
- (2) The amount of the cash advance is required to be repaid at a later date.
- (3) The selling or providing of any item, service, or commodity with the transaction is incidental to, or a pretext for, the advance of funds.

(c) Penalties; Commissioner to Provide and Testify as to Facts in His Possession. – Any person not exempt from this Article, or any officer, agent, ~~employee~~ employee, or representative thereof, who fails to comply with or who otherwise violates any of the provisions of this Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be guilty of a Class 1 misdemeanor. Each ~~such~~ violation shall be considered a separate offense. It ~~shall be~~ is the duty of the Commissioner of Banks to provide the district attorney of the court having jurisdiction of any ~~such~~ offense under this subsection with all facts and evidence in ~~his~~ the Commissioner's actual or constructive possession, and to testify as to ~~such~~ these facts upon the trial of any person for ~~any such~~ the offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation ~~shall be void~~ is void, and the licensee or any other party in violation shall ~~have no right to not~~ collect, ~~receive~~ receive, or retain any principal or charges whatsoever with respect to ~~such~~ the loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of ~~G.S. 53-180(i)~~ such G.S. 53-180(i), the affiliate or subsidiary may recover only its principal on ~~such~~ the loan."

SECTION 3. This act becomes effective October 1, 2006, and applies to transactions that are investigated on or after that date under the North Carolina Consumer Finance Act, Article 15 of Chapter 53 of the General Statutes, as amended by this act, and applies to transactions that are subject to enforcement actions under the North Carolina Consumer Finance Act that are filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 2:22 p.m. on the 13th day of August, 2006.

S.B. 353

Session Law 2006-244

AN ACT TO IMPOSE A MORATORIUM ON THE CONSIDERATION OF PERMIT APPLICATIONS AND ISSUANCE OF PERMITS FOR THE CONSTRUCTION OF NEW LANDFILLS IN THE STATE FOR A PERIOD BEGINNING ON 1 AUGUST 2006 AND ENDING ON 1 AUGUST 2007, SUBJECT ONLY TO THE FOLLOWING EXCEPTIONS: (I) AN AMENDMENT, MODIFICATION, OR OTHER CHANGE TO A PERMIT FOR A LANDFILL ISSUED ON OR BEFORE 1 JUNE 2006; (II) A PERMIT FOR A HORIZONTAL OR VERTICAL EXPANSION OF THE LANDFILL PERMITTED ON OR BEFORE 1 JUNE 2006;

(III) A PERMIT TO CONSTRUCT A NEW LANDFILL WITHIN THE FACILITY BOUNDARY IDENTIFIED IN THE FACILITY PLAN OF A LANDFILL PERMITTED ON OR BEFORE 1 JUNE 2006; (IV) A PERMIT TO OPERATE A NEW LANDFILL IF A PERMIT TO CONSTRUCT THE NEW LANDFILL WAS ISSUED ON OR BEFORE 1 JUNE 2006; (V) A PERMIT FOR A SANITARY LANDFILL USED ONLY TO DISPOSE OF WASTE GENERATED BY A COAL-FIRED GENERATING UNIT THAT IS OWNED OR OPERATED BY AN INVESTOR-OWNED UTILITY SUBJECT TO THE REQUIREMENTS OF G.S. 143-215.107D; AND (VI) A PERMIT FOR A SANITARY LANDFILL DETERMINED TO BE NECESSARY BY THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES IN ORDER TO RESPOND TO AN IMMINENT HAZARD TO PUBLIC HEALTH OR A NATURAL DISASTER; TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO SOLID WASTE DISPOSAL IN ORDER TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT; AND TO CREATE THE JOINT SELECT COMMITTEE ON ENVIRONMENTAL JUSTICE.

Whereas, North Carolina has experienced severe problems from widespread flooding during the past five years; and

Whereas, large areas of the State have also experienced severe drought conditions during the past five years; and

Whereas, groundwater is the source of drinking water for approximately half the population of the State; and

Whereas, depletion of certain large groundwater aquifers in the State has been documented in recent years; and

Whereas, protection and enhancement of water quality in the State's rivers and coastal estuaries is the declared public policy of the State; and

Whereas, North Carolina is home to many rare and endangered species of plants and animals; and

Whereas, the State has established many parks, natural areas, and wildlife refuges to protect habitats for migrating birds and other species; and

Whereas, many fragile ecosystems exist in the State which are in need of further study and protection; and

Whereas, the State recognizes that ecosystems transcend state borders, and that changes affecting the State's water, air, natural habitats, and scenic resources also have impacts outside the State; and

Whereas, it is the policy of the State to ensure the continued public enjoyment of the natural attractions of the State; and

Whereas, improperly sited, designed, or operated landfills have the potential to cause serious environmental damage, including groundwater contamination; and

Whereas, it is essential that the State study the siting, design, and operational requirements for landfills for the disposal of solid waste in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas in order to protect public health and the environment; and

Whereas, it is critical to the protection of public health and the environment to adequately staff the State solid waste program to review permit applications, ensure compliance with State solid waste management laws and rules, and provide technical assistance on solid waste management issues; and

Whereas, economic and other factors may cause landfills to be concentrated in minority and low-income communities in the State; and

Whereas, minority and low-income communities may be at particularly high risk for potential threats to human health and the environment from the siting of landfills in these areas; and

Whereas, it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The definitions set forth in G.S. 130A-290 apply throughout this act.

SECTION 2. Moratorium Established. – There is hereby established a moratorium on consideration of applications for a permit and on the issuance of permits for new landfills in the State. The purposes of this moratorium are to allow the State to study solid waste disposal issues in order to protect public health and the environment. The Department of Environment and Natural Resources shall not consider a permit application nor issue a permit for a new landfill for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste for a period beginning on 1 August 2006 and ending on 1 August 2007.

SECTION 3. Exceptions. – The moratorium established by Section 2 of this act shall not prohibit consideration of an application for or issuance of:

- (1) An amendment, modification, or other change to a permit for a landfill issued on or before 1 June 2006.
- (2) A permit for a horizontal or vertical expansion of the landfill permitted on or before 1 June 2006.
- (3) A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before 1 June 2006.
- (4) A permit to operate a new landfill if a permit to construct the new landfill was issued on or before 1 June 2006.
- (5) A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.
- (6) A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources in order to respond to an imminent hazard to public health or a natural disaster.

SECTION 4.(a) Study. – The Environmental Review Commission, with the assistance of the Division of Waste Management of the Department of Environment and Natural Resources, shall study issues related to solid waste. The Commission shall specifically study measures concerning:

- (1) Financial responsibility requirements for solid waste landfills, including the application of requirements to limited liability companies and other business entity structures of applicants seeking solid waste landfill permits.
- (2) Application of franchise requirements and local government approval for solid waste landfill permits, including adequacy of public notice and comment, community studies, and site designations prior to local government approval.

- (3) Siting, design, and operational requirements for landfills for the disposal of construction or demolition waste, municipal solid waste, or industrial solid waste that are proposed in areas susceptible to flooding from natural disasters, areas with high water tables, and other environmentally sensitive areas.
- (4) Formation of dangerous chemicals and gases in flood-prone landfill environments.
- (5) Traffic considerations for proposed landfills.
- (6) Regulatory oversight and staffing for permitting and compliance of solid waste landfills, and inspection of waste containers on barges, railways, and trucks.
- (7) Compliance with statutory prohibitions on disposal of certain types of solid waste and measures to prevent disposal of hazardous waste in solid waste and construction and demolition landfills.
- (8) Ways to reduce the amount of solid waste disposed of within North Carolina landfills, including statewide tipping fees, bans on the disposal of certain types of waste in landfills, more aggressive recycling requirements, and enhanced regulatory requirements for landfills and other solid waste management facilities.

SECTION 4.(b) Subcommittee. – In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of solid waste management, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 4.(c) Report. – The Commission shall report its findings, together with any recommended legislation, to the 2007 Regular Session of the General Assembly upon its convening.

SECTION 5.(a) Committee Established. – The Joint Select Committee on Environmental Justice is hereby established.

SECTION 5.(b) Membership. – The Committee shall consist of 12 members as follows:

- (1) Four members appointed by the President Pro Tempore of the Senate.
- (2) Four members appointed by the Speaker of the House of Representatives.
- (3) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.
- (4) The President of the North Carolina Conference of the NAACP, or the President's designee.
- (5) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.
- (6) The Executive Director of the North Carolina League of Municipalities, or the Director's designee.

SECTION 5.(c) Cochairs. – The Committee shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Committee shall meet upon the call of the cochairs.

SECTION 5.(d) Quorum. – A quorum of the Committee shall consist of seven members.

SECTION 5.(e) Vacancies. – Any vacancy on the Committee shall be filled by the original appointing authority.

SECTION 5.(f) Purpose and Duties. – The Committee shall study:

- (1) The location of landfills in the State, with historical and current demographic information, including health statistics of the surrounding population of each site where available. The Committee shall identify landfills located in proximity to minority and low-income communities.
- (2) The impacts that landfills located in proximity to minority and low-income communities have on these communities with regard to human health, the environment, and economic development.
- (3) Factors, including economic factors, that may have caused landfills to be concentrated in minority and low-income communities in the State.
- (4) Past enforcement actions taken by the U.S. Environmental Protection Agency or the Department of Environment and Natural Resources for violations affecting human health or the environment at any landfill in the State in order to assess whether enforcement practices for violations at these sites have resulted in uneven enforcement outcomes, and to determine if alternative or stronger enforcement measures could be taken, or in the alternative if other methods could be used to allocate resources, in order to more equitably serve minority and low-income communities.
- (5) Statutes, rules, and policies used by State, regional, and local governments, and a review of the role played by these entities to influence or make siting and land-use decisions concerning landfills in the State.
- (6) Data and methodologies by which State, regional, and local governments might become more specifically aware of situations in which neighborhoods are at particularly high risk for potential threats to human health and the environment from the siting of landfills.
- (7) Approaches to ensure consideration of environmental justice and equity issues when formulating and implementing policies, procedures, and legislation within governmental agencies and other institutions.

SECTION 5.(g) Expenses of Members. – Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1.

SECTION 5.(h) Staff. – Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Committee to aid in its work.

SECTION 5.(i) Consultants. – The Committee may hire consultants to assist with the study as provided in G.S. 120-32.02(b).

SECTION 5.(j) Meetings. – The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Committee.

SECTION 5.(k) Report. – The Committee shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 February 2007, at which time the Committee shall terminate.

SECTION 5.(l) Funding. – From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

SECTION 6. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:45 a.m. on the 14th day of August, 2006.

H.B. 1231**Session Law 2006-245****AN ACT TO PROTECT CONSUMERS FROM EXTREME PRICING PRACTICES.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 reads as rewritten:

"§ 75-38. **Prohibit excessive pricing during states of ~~disaster~~disaster, states of emergency, or abnormal market disruptions.**

(a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandisegoods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

- (1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the ~~state of disaster; and~~triggering event.
- (2) ~~The seller offered to sell or rent the merchandise or service at a price that was below the price charged by the seller exceeds the seller's average price in the preceding 60 days before the state of disaster.~~triggering event. If the seller did not sell or rent or offer to sell or rent the merchandise-goods or service in question prior to the time the state of disaster was declared, of the triggering event, the price at which the merchandise-goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.
- (3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a ~~state of disaster triggering event~~ is the earlier of 45 days ~~after the triggering event occurs~~ or the ~~expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.~~ ~~a natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.~~

(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. 166A-8, the proclamation of a state of disaster pursuant to Article 36A of Chapter 14 of the General Statutes, G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 1:08 p.m. on the 15th day of August, 2006.

S.B. 1566

Session Law 2006-246

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Disapproval of Certain Rules. – Pursuant to G.S. 150B-21.3 and S.L. 2003-229, the following rules, as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 17 November 2005, are disapproved:

- 15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)
- 15A NCAC 2H.1015 (Urbanizing Area Definitions)
- 15A NCAC 2H.1016 (Urbanizing County Designations)
- 15A NCAC 2H.1017 (Application Schedule and Required Contents)
- 15A NCAC 2H.1018 (Post-Construction Model Practices)

15A NCAC 2H.1019 (Exceptions)
 15A NCAC 2H.0126 (Stormwater Discharges)
 15A NCAC 2H.0150 (Definitions)
 15A NCAC 2H.0151 (Public Entity Designations)
 15A NCAC 2H.0152 (Petitions)
 15A NCAC 2H.0153 (Application Schedule and Required Contents)
 15A NCAC 2H.0154 (Implementation Schedule)
 15A NCAC 2H.0155 (Post-Construction Model Practices)
 15A NCAC 2H.0156 (Exceptions)

SECTION 1.(b) Sunset of 2004 Phase II Stormwater Management Legislation. – Section 15 of S.L. 2004-163 reads as rewritten:

"SECTION 15. This act is effective when it becomes law and expires ~~1 October 2011~~ 1 July 2006."

SECTION 2. Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Built-upon area" means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (8) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (9) "Division" means the Division of Water Quality in the Department.
- (10) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (11) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

- (12) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.
- (13) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (14) "Sensitive receiving waters" means any of the following:
 - a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
 - b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
 - c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.
- (16) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).
- (17) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

SECTION 3. Program Implementation. – The Commission shall implement the federal Phase II stormwater management requirements set out in 40 Code of Federal Regulations §§ 122.21, 122.26, and 122.28 through 122.37 (1 July 2003 Edition).

SECTION 4.(a) Development in Unincorporated Areas of Counties. –

(a) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007 if the development is located in:

- (1) An area that is designated as an urbanized area under the most recent federal decennial census.
- (2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
 - a. One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
 - b. Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
 - c. Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (3) An area delineated pursuant to subsection (b) of this section.
- (4) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in subdivision (2) of subsection (a) of this section; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 6 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed seventy-five percent (75%) of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:
 - a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
 - b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
 - c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
 - d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
 - e. High Quality Waters (HQW) – 15A NCAC 2H.1006.
 - f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
 - g. The Coastal Stormwater Program – 15A NCAC 2H.1005.
 - h. The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
 - i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
 - j. The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.
 - k. Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.
- (5) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual

population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

(b) Delineation Process. – The Commission shall delineate regulated coverage areas as provided in this subsection.

- (1) Schedule. – The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
- (2) Potential candidate coverage areas. – A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to subdivisions (2) and (3) of Section 5 of this act that:
 - a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
 - b. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
 - c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (3) Identification of candidate coverage areas. – The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of subdivision (2) of this subsection as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
- (4) Notice and comment on candidacy. – The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
- (5) Delineation of regulated coverage areas. – After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
 - a. Adversely impacts water quality.
 - b. Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101

(Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

- (6) Notice of delineation. – The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

(c) Except as provided in this subsection and Section 10 of this act, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

SECTION 4.(b) Development in Non-Phase II Incorporated Areas in Certain Counties. – Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in subdivisions (4) and (5) of subsection (a) of this section, that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Section 9 of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 10 of this act.

SECTION 5. Designation of Regulated Entities. – A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

- (1) Federal designation. – A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).
- (2) State designation process. – The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in this subdivision.
 - a. Designation schedule. – The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - b. Identification of candidate regulated entities. – The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 1. Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not

- limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
2. Serves a public entity that has not been designated pursuant to subdivision (1) of this section and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
- c. Notice and comment on candidacy. – The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.
 - d. Designation of regulated entities. – After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
 1. The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
 2. The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.
 3. The public entity has an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.
 4. The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
 5. The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

- e. Notice of designation. – The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.
 - f. Application schedule. – A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. – The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

SECTION 6. Petition Process. – A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

- (1) Connected discharge petition. – An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).
- (2) Adverse impact petition. – Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant

Discharge Elimination System (NPDES) permit for stormwater management.

- a. Petition review. – The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:
 1. The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation.
 2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters.
 3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.
- b. Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:
 1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.
 2. Scientific or technical literature that supports the sampling methods.
 3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
 4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.
 5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or

- discharge contributes pollutants for which the waters are impaired or degraded.
6. For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.
 - c. Water quality protection program offset. – If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.
- (3) Petition administration. – The Commission shall process petitions in the following manner:
- a. The Commission shall only accept petitions submitted on Department forms.
 - b. A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.
 - c. The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.
 - d. The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.
 - e. The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.

- f. The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.
- g. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.
 - 1. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.
 - 2. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.
- h. The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater

within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

SECTION 7. Permit Standards. – To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as provided in Section 9 of this act. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

SECTION 8. Exclusions from Post-Construction Practices. – The post-construction practices required by Section 9 of this act shall not apply to any of the following:

- (1) Development in an area where the requirements of Section 9 of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
 - a. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
 - b. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
 - c. A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Section 9 of this act, if the Commission is responsible for implementation of the requirements of Section 9 of this act, that shows:
 1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
 2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of Section 9 of this act to that phase of development would require a material change in that phase of the plan.
 - d. A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Section 9 of this act.
 - e. A vested right to the development pursuant to common law.
- (2) Redevelopment.

SECTION 9. Post-Construction Practices. –

(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

- (1) Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
- (2) Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
- (3) Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
- (4) Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
- (5) Freshwater High Quality Waters (HQW) – 15A NCAC 2H.1006.
- (6) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
- (7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
- (8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
- (9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

- (1) Post-construction model practices for low-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.
- (2) Post-construction model practices for high-density projects. – A project that is located within one-half mile of and draining to Shellfish

Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

- a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.
- d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
- e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

(f) Permittees, delegated programs, and regulated entities must impose or require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and

maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

- (1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
- (2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
- (3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

- (1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
- (2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

- (1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
- (2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

SECTION 10. Delegation. – A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Section 4 of this act may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Section 9 of this act. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Section 9 of this act. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

SECTION 11.(a) Exceptions. – The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

- (1) An exception may be granted if the application meets all of the following criteria:
 - a. Unnecessary hardships would result from strict application of the act.
 - b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - c. The hardships did not result from actions taken by the petitioner.
 - d. The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit

from the property shall not be considered adequate justification for an exception.

- (2) Notwithstanding subdivision (1) of this section, exceptions shall be granted in any of the following instances:
 - a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

SECTION 11.(b) Exemption. – A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

SECTION 11.(c) Waiver. – The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e) (1 July 2003 Edition).

SECTION 12. Implementation Schedule. – The requirements of this act shall be implemented as follows:

- (1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Sections 4, 5, or 6 of this act.
- (2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.
- (3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.
- (4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

SECTION 13. Federal and State Projects. – The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular project, then the project is subject to the stormwater management requirements of this act as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this act.

SECTION 14. General Permit. – The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out in Section 9 of this act but shall not impose any requirement on the permittee that exceeds the standards set out in Section 9 of this act. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this section.

SECTION 15. Additional Rule Making. – The Commission may adopt rules to replace the rules that are disapproved as provided in subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this section, notwithstanding G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Sections 2 through 13 of this act. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 16.(a) G.S. 47-29.1 is amended by adding a new subsection to read:

"(h) A land-use restriction that provides for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans shall be recorded as provided in G.S. 143-214.7(c1)."

SECTION 16.(b) G.S. 143-214.7 is amended by adding a new subsection to read:

"(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction."

SECTION 17.(a) County Stormwater Control Ordinances. – Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-454. Stormwater control.

(a) A county may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A county may adopt a stormwater management ordinance pursuant to this Chapter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a county stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A county may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the county. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a county may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A county may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A county that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish the stormwater control program necessary for the county to comply with the permit. A county may adopt an ordinance that bans illicit discharges. A county may adopt an ordinance that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project."

SECTION 17.(b) City Stormwater Control Ordinances. – Part 8 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read: "**§ 160A-459. Stormwater control.**

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a city stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A city may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the city. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a city may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project.

(e) Unless the city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3) (1 July 2003 Edition) in its extraterritorial jurisdiction."

SECTION 18. Construction of Act. –

- (1) Except as specifically provided in Section 15 of this act, nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government.
- (2) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.

- (3) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.
- (4) The definitions of 'development' and 'redevelopment' set out in this act do not alter or amend the definition of 'redevelopment' set out in G.S. 113A-103 and do not apply to the Coastal Area Management Act of 1974, Article 7 of Chapter 113A of the General Statutes.
- (5) As used in Section 9 of this act, the phrase 'common plan of development or sale' shall be interpreted and implemented in a manner consistent with the memorandum referenced as 'Guidance Interpreting Phase II Stormwater Requirements' from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006.

SECTION 19. Certain Provisions of Act Not Codified; Set Out As Note. – Except for Sections 16 and 17 of this act, notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

SECTION 20. Effective Date. – This act is effective retroactively to 1 July 2006. Sections 2 through 13 of this act expire when permanent rules to replace those sections have become effective as provided by Section 15 of this act.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:50 a.m. on the 16th day of August, 2006.

H.B. 1896

Session Law 2006-247

AN ACT TO (1) AMEND THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS; (2) IMPLEMENT A SATELLITE-BASED MONITORING SYSTEM TO ASSIST WITH THE SUPERVISION OF CERTAIN SEX OFFENDERS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE; (3) EXPAND THE DEFINITION OF 'SEXUAL CONTACT' AS IT RELATES TO THE OFFENSE OF SEXUAL BATTERY; (4) AUTHORIZE THE DEPARTMENT OF CORRECTION TO STUDY THE MENTAL HEALTH TREATMENT PRACTICES OF SEX OFFENDERS; (5) CREATE THE CRIMINAL OFFENSES OF HUMAN TRAFFICKING AND SEXUAL SERVITUDE; (6) AMEND THE OFFENSE OF INVOLUNTARY SERVITUDE; (7) ADD THE OFFENSE OF SEXUAL SERVITUDE TO THE LIST OF OFFENSES THAT REQUIRE REGISTRATION UNDER SEX OFFENDER REGISTRATION LAWS; (8) TO MAKE IT A CLASS G FELONY FOR A SEX OFFENDER TO RESIDE WITHIN ONE THOUSAND FEET OF A PUBLIC OR NONPUBLIC SCHOOL OR A CHILD CARE CENTER; (9) AMEND LAWS APPLICABLE TO NOTIFICATION OF SEX OFFENDER REGISTRATION REQUIREMENTS BY THE DIVISION OF MOTOR VEHICLES; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS "AN ACT TO PROTECT NORTH CAROLINA'S CHILDREN/SEX OFFENDER LAW CHANGES."

The General Assembly of North Carolina enacts:

SECTION 1.(a) This act shall be known as "An Act To Protect North Carolina's Children/Sex Offender Law Changes."

SECTION 1.(b) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(c) Section 1(a) shall be effective when the act becomes law. The remainder of this section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"§ 14-208.6A. Lifetime registration requirements for criminal offenders.

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.8A. Notification requirement for out-of-county employment if temporary residence established.

(a) Notice Required. – A person required to register under G.S. 14-208.7 shall notify the sheriff of the county with whom the person is registered of the person's place of employment and temporary residence, which includes a hotel, motel, or other transient lodging place, if the person meets both of the following conditions:

- (1) Is employed or carries on a vocation in a county in the State other than the county in which the person is registered for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis, with or without compensation or government or educational benefit.
- (2) Maintains a temporary residence, including in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 72 hours after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Division. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division. The Division shall notify the sheriff of the county where the person is working and maintaining a temporary residence of the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 reads as rewritten:

"§ 14-208.7. Registration.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

- (1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or
- (2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least 10 years following the date of initial county registration.~~release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.~~

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

- (1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;
- (2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;
- (3) A current photograph;
- (4) The person's fingerprints;
- (5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and
- (6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section. The sheriff shall provide the registrant with written proof of registration at the time of registration.

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"§ 14-208.9. Change of address; change of academic status or educational employment status.

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register ~~moves~~ intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least 10 days before the date the person intends to leave this State to establish residence in another state or jurisdiction. ~~provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered.~~ The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

(1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.

(2) The sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the ~~change of address~~ information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within 10 days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. ~~status.~~ The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. ~~Upon receipt of the notice, the~~ The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person ~~shall~~ shall, within 10 days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. ~~Upon receipt of the notice, the~~ The sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:**"§ 14-208.9A. Verification of registration information.**

(a) The information in the county registry shall be verified ~~annually~~ semiannually for each registrant as follows:

- (1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.
- (2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.
- (3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.
- (3a) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to include with the verification form.
- (4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. ~~If the verification form is returned to the sheriff as undeliverable,~~ person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) Additional Verification May Be Required. – During the period that an offender is required to be registered under this Article, the sheriff is authorized to attempt to verify that the offender continues to reside at the address last registered by the offender.

(c) Additional Photograph May Be Required. – If it appears to the sheriff that the current photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, upon in-person notice from the sheriff, the sex offender shall allow the sheriff to take another photograph of the sex offender at the time of the sheriff's request. If requested by the sheriff, the sex offender shall appear in person at the sheriff's office during normal business hours within 72 hours of being requested to do so and shall allow the sheriff to take another photograph of the sex offender. A person who willfully fails to comply with this subsection is guilty of a Class 1 misdemeanor."

SECTION 7.(b) This section becomes effective December 1, 2006, and applies to offenses on or after that date.

SECTION 8.(a) G.S. 14-208.11 reads as rewritten:**"§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.**

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

- (1) ~~Fails to register.~~ register as required by this Article.
- (2) ~~Fails to notify the last registering sheriff of a change of address.~~ address as required by this Article.
- (3) Fails to return a verification notice as required under G.S. 14-208.9A.
- (4) Forges or submits under false pretenses the information or verification notices required under this Article.
- (5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.
- (6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.
- (7) Fails to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.
- (8) Reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff in the manner required by G.S. 14-208.9.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

(c) A person who is unable to meet the registration or verification requirements of this Article shall be deemed to have complied with its requirements if:

- (1) The person is incarcerated in, or is in the custody of, a local, State, private, or federal correctional facility,
- (2) The person notifies the official in charge of the facility of their status as a person with a legal obligation or requirement under this Article and
- (3) The person meets the registration or verification requirements of this Article no later than 10 days after release from confinement or custody."

SECTION 8.(b) G.S. 14-208.11(a), as amended by Section 8(a) of this section, reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

...

- (9) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A."

SECTION 8.(c) Section 8(b) of this section becomes effective June 1, 2007, and applies to offenses committed on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 9.1.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.

(a) It shall be unlawful and a Class H felony for any person who has reason to believe that an offender is in violation of the requirements of this Article, and who has the intent to assist the offender in eluding arrest, to do any of the following:

- (1) Withhold information from, or fail to notify, a law enforcement agency about the offender's noncompliance with the requirements of this Article, and, if known, the whereabouts of the offender.
- (2) Harbor, attempt to harbor, or assist another person in harboring or attempting to harbor, the offender.
- (3) Conceal, or attempt to conceal, or assist another person in concealing or attempting to conceal, the offender.
- (4) Provide information to a law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 9.1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"§ 14-208.12A. Termination-Request for termination of registration requirement.

(a) A person required to register under this Part may petition the superior court in the district where the person resides to terminate the registration requirement. The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(a1) The court may grant the relief if:

- (1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,
- (2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and
- (3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(a2) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(a3) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.terminated by the court under subsection (a1) of this section."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.16. Residential restrictions.

(a) A registrant under this Article shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located.

(b) As used in this section, 'school' does not include home schools as defined in G.S. 115C-563 or institutions of higher education, and the term 'child care center' is defined by G.S. 110-86(3). The term 'registrant' means a person who is registered, or is required to register, under this Article.

(c) This section does not apply to child care centers that are located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(d) Changes in the ownership of or use of property within 1,000 feet of a registrant's registered address that occur after a registrant establishes residency at the registered address shall not form the basis for finding that an offender is in violation of this section. For purposes of this subsection, a residence is established when the registrant does any of the following:

- (1) Purchases the residence or enters into a specifically enforceable contract to purchase the residence.
- (2) Enters into a written lease contract for the residence and for as long as the person is lawfully entitled to remain on the premises.
- (3) Resides with an immediate family member who established residence in accordance with this subsection. For purposes of this subsection, 'immediate family member' means a child, sibling, or parent of the registrant.

(e) Nothing in this section shall be construed as creating a private cause of action against a real estate agent or landlord for any act or omission arising out of the residential restriction in this section.

(f) A violation of this section is a Class G felony."

SECTION 11.(b) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.17. Sexual predator prohibited from working or volunteering for child-involved activities; limitation on residential use.

(a) It shall be unlawful for any person required to register under this Article to work for any person or as a sole proprietor, with or without compensation, at any place where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors.

(b) It shall be unlawful for any person to conduct any activity at his or her residence where the person:

- (1) Accepts a minor or minors into his or her care or custody from another, and
- (2) Knows that a person who resides at that same location is required to register under this Article.

(c) A violation of this section is a Class F felony."

SECTION 11.(c) Subsection (a) of this section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date.

Subsection (a) of this section does not apply to a person who has established a residence prior to the effective date of this subsection in accordance with the provisions in G.S. 14-208.16(d)(1), (2), or (3) as enacted by this act. This subsection is effective when this act becomes law. The remainder of this section is effective on December 1, 2006, and applies to offenses committed on or after that date.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(5) 'Sexual contact' means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, ~~or~~ (ii) a person touching another person with their own sexual organ, anus, breast, groin, or ~~buttocks~~, buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. G.S. 14-208.28 reads as rewritten:

"§ 14-208.28. Verification of registration information.

The information provided to the sheriff shall be verified ~~annually~~ semiannually for each juvenile registrant as follows:

- (1) Every year on the anniversary of a juvenile's initial registration ~~date, date and six months after that date~~, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.
- (2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.
- (3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form."

SECTION 14. G.S. 15A-1341 is amended by adding a new subsection to read:

"(d) Search of Sex Offender Registration Information Required When Placing a Defendant on Probation. – When the court places a defendant on probation, the probation officer assigned to the defendant shall conduct a search of the defendant's name or other identifying information against the registration information regarding sex offenders compiled by the Division of Criminal Statistics of the Department of Justice in accordance with Article 27A of Chapter 14 of the General Statutes. The probation officer may conduct the search using the Internet site maintained by the Division of Criminal Statistics."

SECTION 15.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"§ 14-208.33. Establishment of program; creation of guidelines; duties.

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

- (1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article

27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.

- (2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. An offender in this category who is ordered by the court to submit to satellite-based monitoring is subject to that requirement only for the period of time ordered by the court and is not subject to a requirement of lifetime satellite-based monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

- (1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.
- (2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.

(a) Any person described by G.S. 14-208.33(a)(1) shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the registration period imposed under G.S. 14-208.23 which is the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.35.

(b) Any person described by G.S. 14-208.33(a)(2) who is ordered by the court to enroll in a satellite-based monitoring program shall do so with the Division of Community Corrections office in the county where the person resides. The person shall

remain enrolled in the satellite-based monitoring program for the period of time ordered by the court.

"§ 14-208.35. Lifetime registration offenders required to submit to satellite-based monitoring for life and to continue on unsupervised probation upon completion of sentence.

Notwithstanding any other provision of law, when the court sentences an offender who is in the category described by G.S. 14-208.33(a)(1) for a reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll in a satellite-based monitoring program, the court shall also order that the offender, upon completion of the offender's sentence and any term of parole, post-release supervision, intermediate punishment, or supervised probation that follows the sentence, continue to be enrolled in the satellite-based monitoring program for the offender's life and be placed on unsupervised probation unless the requirement that the person enroll in a satellite-based monitoring program is terminated pursuant to G.S. 14-208.36.

"§ 14-208.36. Request for termination of satellite-based monitoring requirement.

(a) An offender described by G.S. 14-308.33(a)(1) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence.

(b) Upon receipt of the request for termination, the Commission shall review documentation contained in the offender's file and the statewide registry to determine whether the person has complied with the provisions of this Article. In addition, the Commission shall conduct fingerprint-based state and federal criminal history record checks to determine whether the person has been convicted of any additional reportable convictions.

(c) If it is determined that the person has not received any additional reportable convictions during the period of satellite-based monitoring and the person has substantially complied with the provisions of this Article, the Commission may terminate the monitoring requirement if the Commission finds that the person is not likely to pose a threat to the safety of others.

(d) If it is determined that the person has received any additional reportable convictions during the period of satellite-based monitoring or has not substantially complied with the provisions of this Article, the Commission shall not order the termination of the monitoring requirement.

(e) The Commission shall not consider any request to terminate a monitoring requirement except as provided by this section. The Commission has no authority to consider or terminate a monitoring requirement for an offender described in G.S. 14-208.33(a)(2).

"§ 14-208.37. Failure to enroll; tampering with device.

(a) Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.

(b) Any person who intentionally tampers with, removes, or vandalizes a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.

"§ 14-208.38. Fees.

(a) There shall be a one-time fee of ninety dollars (\$90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based 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 (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department of Correction.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule."

SECTION 15.(b) G.S. 15A-1343(b2) reads as rewritten:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- (4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
- (5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.
- (6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.
- (7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1).
- (8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is in the category described by G.S. 14-208.33(a)(2), and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised ~~probation~~, except as provided in G.S. 14-208.35."

SECTION 15.(c) G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 15.(d) G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 15.(e) G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 15.(f) G.S. 15A-1368.2 is amended by adding a new subsection to read:

"(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 14-208.36."

SECTION 15.(g) G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- (4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
- (5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that

the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

- (6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1).
- (7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(2)."

SECTION 15.(h) G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2), the Commission must require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 15.(i) G.S. 143B-266 is amended by adding a new subsection to read:

"(e) The Commission may accept and review requests from persons placed on probation, parole, or post-release supervision to terminate a mandatory condition of satellite-based monitoring as provided by G.S. 14-208.35. The Commission may grant or deny those requests in compliance with G.S.14-208.35."

SECTION 15.(j) The Department of Correction shall have the program enacted by subsection (a) of this section established by January 1, 2007.

SECTION 15.(k) This subsection is effective on July 1, 2006. Of the funds appropriated by Senate Bill 1741 as enacted by the 2005 General Assembly, Regular Session 2006, to the Department of Correction for the 2006-2007 fiscal year the sum of one million three hundred seven thousand two hundred eighteen dollars (\$1,307,218) shall be used to implement the sex offender monitoring program established pursuant to this section. Notwithstanding G.S. 143-23(a2), the Department of Correction may use available funds to implement this program during the 2006-2007 fiscal year if expenditures are anticipated to exceed the amount appropriated by this act. Prior to exceeding the amount appropriated for this program by this act, the Department of Correction shall report to the Joint Legislative Commission on Governmental Operations.

SECTION 15.(l) Unless otherwise provided in the section, this section is effective when it becomes law and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole. However, the requirement to enroll in a satellite-based program is not mandatory until January 1, 2007, when the program is established.

SECTION 16. The Department of Correction shall either issue an RFP prior to signing a contract, or with prior approval by the State Chief Information Officer or his designee, enter into a contract through an approved contracting alliance or consortium for a passive and active Global Positioning System. The system shall be for

use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. If an RFP is issued, the contract shall be awarded by October 1, 2006 for contract terms to begin January 1, 2007. The Department of Correction shall report by November 1, 2006 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 on the details of the awarded contract.

SECTION 17. No later than January 1, 2007, the Department of Correction shall develop a graduated risk assessment program that identifies, assesses, and closely monitors a high-risk sex offender who, while not classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, may still require extraordinary supervision and may be placed on probation, parole, or post-release supervision only on the conditions provided in G.S. 15A-1343(b2) or G.S. 15A-1368.4(b1).

SECTION 18. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 19.(a) G.S. 14-208.6(4)(b) reads as rewritten:

"b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this ~~section~~section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state."

SECTION 19.(b) Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-9.3. Notification of requirements for sex offender registration.

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes."

SECTION 19.(c) G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

- (1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.
- (2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.
- (3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.
- (4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30."

SECTION 19.(d) G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant who has resided in this State for less than 12 months until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

- (1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

- (2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.
- (3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8, and the Division shall promptly notify the sheriff of the county where the person resides of the offense.
- (4) Any person denied a special identification card by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction, and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8."

SECTION 19.(e) Section 19.(a) of this act becomes effective December 1, 2006, and applies to all offenses committed on or after that date and to all individuals who move into this State on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date.

SECTION 20.(a) G.S. 14-43.2 is repealed.

SECTION 20.(b) Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 10A.

"Human Trafficking.

"§ 14-43.4. Definitions.

(a) Definitions. – The following definitions apply in this Article:

(1) Coercion. – The term includes all of the following:

- a. Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person.

- b. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.
 - c. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person.
 - d. Providing a controlled substance, as defined by G.S. 90-87, to a person.
- (2) Deception. – The term includes all of the following:
- a. Creating or confirming another's impression of an existing fact or past event that is false and which the accused knows or believes to be false.
 - b. Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt.
 - c. Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed.
- (3) Involuntary servitude. – The term includes the following:
- a. The performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and
 - b. By deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.
- (4) Minor. – A person who is less than 18 years of age.
- (5) Sexual servitude. – The term includes the following:
- a. Any sexual activity as defined in G.S. 14-190.13 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
 - b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

"§ 14-43.5. Human trafficking.

(a) A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

"§ 14-43.6. Involuntary servitude.

(a) A person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor.

"§ 14-43.7. Sexual servitude.

(a) A person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.

(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section."

SECTION 20.(c) G.S. 14-39(a) reads as rewritten:

"(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

- (1) Holding such other person for a ransom or as a hostage or using such other person as a shield; or
- (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or
- (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person; or
- (4) Holding such other person in involuntary servitude in violation of G.S. 14-43.2; 14-43.6.
- (5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.5.
- (6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.7."

SECTION 20.(d) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-43.7 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 20.(e) G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

- a. A Class A, B1, B2, C, D, or E felony.
- b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; ~~14-43.2;~~ 14-43.6; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-277.3; 14-288.9; or 20-138.5.
- c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.
- e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
- f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
- g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3."

SECTION 21. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 22. Section 15 of this act is effective as provided herein. Sections 14, 16, 17, 18, 21, and 22 are effective when this act becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions. Except as otherwise provided in this act, the remainder of this act

becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:50 a.m. on the 16th day of August, 2006.

H.B. 1723**Session Law 2006-248**

AN ACT TO PROVIDE FOR STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, STATUTORY OVERSIGHT COMMITTEES AND COMMISSIONS, AND OTHER AGENCIES, COMMITTEES, AND COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2006."

PART II. LEGISLATIVE RESEARCH COMMISSION

SECTION 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor are listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 2005 Regular Session or 2006 Regular Session of the 2005 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

- (1) Government Regulatory Issues:
 - a. Banking laws (S.B. 786 – Hoyle)
- (2) Transportation Issues:
 - a. Ban cell phone use while driving (H.B. 1104 – McAllister)
 - b. Exemptions from safety and emissions inspections (S.B. 530 – Dalton)
 - c. Environmental review, permitting, and mitigation process in the construction or expansion of State highways (H.B. 1761 – Dollar)
- (3) Consumer Issues:
 - a. Credit report identity theft (H.B. 546 – Adams)
 - b. Personal information privacy (S.B. 996 – Cowell)
 - c. Mortgage payoffs (Hunt)
 - d. Motor vehicle repair (S.B. 952 – Lucas, Bingham, Kinnaird)
- (4) Insurance Issues:
 - a. Assist small business health insurance (S.B. 478 – Dalton)
 - b. High-risk insurance (H.B. 180 – Setzer)
 - c. Additional sureties for public construction contracts (H.B. 2793 – Parmon, Womble, Michaux)

- (5) Criminal Law Issues:
 - a. Exclusionary rule/good faith exception (H.B. 1439 – Stam)
 - b. Habitual felon statutes (H.B. 1308 – Michaux)
 - c. Minority incarceration (H.B. 49)
 - d. The provisions and penalties of G.S. 20-138.3, driving by a person less than 21 years old after consuming alcohol or drugs (Dickson)
 - e. Racial bias and the death penalty (H.B. 2833 – Earle)
- (6) State/Local Government Employee Issues:
 - a. Beneficiary designation and dependent survivors of members of the Teachers' and State Employees' Retirement System (Dorsett)
 - b. State employee mediation and length of backlog of appeals process (Rand)
 - c. Mediation of State employee grievances (H.B. 716 – Coleman)
 - d. Severance pay changes (H.B. 703 – Crawford)
 - e. State employee demonstration projects (H.B. 730 – Crawford, Sherrill)
 - f. Prospective elimination of SPA longevity pay (H.B. 731 – Crawford)
 - g. Flexible benefits program centralized under OSP (H.B. 751 – Crawford, Holliman)
 - h. Sick leave bank and family leave (H.B. 2746 – Insko)
- (7) Labor, Employment, and Economic Development Issues:
 - a. North Carolina National Guard Pension Fund (S.B. 573 – Atwater)
 - b. Validity of statistics provided by the Industrial Commission (Berger of Franklin)
 - c. Industrial Commission's monitoring of filing of forms (Berger of Franklin)
 - d. Streamline forms required by Industrial Commission (Berger of Franklin)
 - e. UI claims/shorten employer response time (Shaw)
 - f. Loss of workers' compensation for fraud (S.B. 863 – Berger of Franklin)
 - g. Workers' compensation and injuries to extremities (S.B. 864 – Berger of Franklin)
 - h. Employee work incentives under the Workers' Compensation Act (S.B. 865 – Berger of Franklin)
 - i. Increase cap on award for loss of organ under the Workers' Compensation Act (S.B. 866 – Berger of Franklin)
 - j. Small business improvement (S.B. 664 – Dalton)
 - k. Amendments to Workers' Compensation Act (Holliman)
 - l. Salaries of nonprofit directors and executives (Owens)
- (8) Health and Human Services Issues:
 - a. Men's health
 - b. Peanut allergies/restaurant postings (H.B. 920 – Alexander)
 - c. Naturopathic registration (Kinnaird)

- d. Cost control of medical services for persons in local confinement facilities (Wilkins, Wright)
- e. Treatment services funding/drug treatment courts (Insko)
- (9) Other:
 - a. Trafficking of persons (H.J.R. 1461 – Alexander; Kinnaird)
 - b. Nanotechnology (H.B. 641 – Faison)
 - c. Public building contract laws (H.B. 1547 – Parmon)
 - d. Unfit dwellings (S.B. 982 – Cowell)
 - e. Exempt builders' inventories from property tax increases (S.B. 508 – Dalton)
 - f. Liabilities of general contractors to subcontractors (Rand)
 - g. Construction indemnity agreement issues (Rand)
 - h. System of care common identifiers (Kinnaird)
 - i. Manufactured homes/good faith evictions (H.B. 1243 – Fisher)
 - j. Refusal rights-forced public partition sales (H.B. 1309 – Michaux)
 - k. Victim restitution (Holliman)
 - l. Agency internal auditors (Tucker)
 - m. Tax policy changes
 - n. Video conferencing (Haire)
 - o. Recovery of costs in civil cases (H.B. 2070 – Glazier)
 - p. Erroneous paternity judgments (H.B. 2143 – Moore)
 - q. Membership of the Wildlife Resources Commission (Williams)
 - r. Annexation (Glazier)
 - s. Construction cost threshold requirement for a general contractor's license (H.B. 2612 – Earle, Weiss, Glazier)
 - t. Credit enhancement services (H.B. 2836 – Earle, Barnhart, Grady, Saunders)
 - u. West regional facility maintenance (Church)
 - v. Hepatitis C (H.B. 2832 – Earle)
 - w. Impact of ethics legislation on local elected officials (Coleman)
 - x. Real estate resale dealers (H.B. 725 – Ross, Howard, Goforth, Clodfelter)
 - y. Tax reevaluation (Nesbitt)
 - z. Homestead exemption (Nesbitt)
 - aa. Equine industry (H.B. 1826 – Cole; S.B. 901 – Weinstein)

SECTION 2.1.(a) Superior Court Discovery (H.B. 1211 – Sutton, Rand) –

The Commission may study State disclosure requirements in superior court discovery. If it undertakes the study, the Commission shall consider:

- (1) The issue of identities of informants who furnished information leading to a search warrant against the defendant.
- (2) The issue of personal information of the victim.
- (3) The "work product" provision of G.S. 15A-904.
- (4) Open discovery in noncapital postconviction cases.
- (5) Any other related issues.

The Commission may make its final report to the 2007 General Assembly upon its convening.

SECTION 2.1.(b) Impact of Regulation on the Cost of Housing (Hoyle) –

The Commission may study the impact of State and local government regulation on the

cost of housing and recommend ways to reduce or eliminate conflicting, duplicative, outdated, or unnecessary regulations, including the consolidation or elimination of governmental agencies and programs.

SECTION 2.1.(c) Transferring the Deferred Compensation Program (Rand) – The Commission may study the feasibility of transferring the Public Employee Deferred Compensation Program established under G.S. 143B-426.24 from the Department of Administration to the Department of the State Treasurer.

SECTION 2.1.(d) Consumer Credit Counseling (Dorsett) – The Commission may study State and federal laws, rules, and policies pertaining to consumer credit counseling and debt management and may make recommendations for reforming relevant North Carolina civil, criminal, and administrative law, regulations, and policies. The Commission may examine the appropriateness of consumer protection provisions and standards for providers of services, and the adequacy of enforcement tools and practices.

SECTION 2.1.(e) Impact of Undocumented Immigrants (Justice) – The Commission may study the effects of undocumented immigrants on the State. The Commission may consider the following issues:

- (1) Impacts on the State's health care, education, and social services systems.
- (2) Impacts on the criminal justice system and corrections.
- (3) Impacts on the State's economy, including the fiscal ramifications of compliance with federal laws requiring the provision of specific services to undocumented immigrants.
- (4) Impacts on the economic and workforce development, including the provision of and the need for low-cost labor for agriculture, construction, tourism, and other industries.
- (5) Any other relevant issues.

SECTION 2.1.(f) Pharmacy Benefits Manager Regulation (H.B. 1374) – The Commission may study issues regarding the regulation of pharmacy benefit management.

SECTION 2.1.(g) Local Governmental Employees Retirement System – The Commission may study issues related to establishing a higher option within the Local Governmental Employees Retirement System. The Commission may consider the following issues:

- (1) Whether the higher option should include all local governmental employees.
- (2) Whether the higher option would be voluntary and require each individual governing body to approve it for employee participation.
- (3) Whether there should be a deadline or sunset provision for a local government to adopt the higher option.
- (4) Whether "buy back credit" provisions for the time period an employee is in the lower option are feasible.
- (5) Any other relevant issues the Commission deems necessary to the study.

SECTION 2.1.(h) Chapter 24 Exemptions (Brubaker) – The Commission may study issues related to authorizing the Commissioner of Banks to permit affiliates of licensees under G.S. 53-176 to be exempt from certain provisions of Chapter 24 of the General Statutes.

SECTION 2.1.(i) Effectiveness of the State Purchasing and Contract System – The Commission may study the effectiveness of the State purchasing and contract system including its accessibility and impact on the State's small businesses and the participation of minority contractors.

SECTION 2.1.(j) Red Light Camera Clear Proceeds (Goodwin) – The Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

SECTION 2.1.(k) Adequate Public Facilities Ordinances (Rand) – The Commission may study issues related to the adoption of adequate public facilities ordinances by local governments. For the purposes of the study, an adequate public facilities ordinance is any ordinance, policy, guideline, or procedure adopted by a local government that ties or conditions development approval to the availability and adequacy of public facilities and services. In particular, the Commission shall study the extent to which such ordinances increase the cost of housing and affect State and local tax revenues, employment, and economic development.

SECTION 2.1.(l) For-Profit Recycling Businesses (Rand) – The Commission may study issues related to developing strategies to protect the State's citizens from being misled into unknowingly donating goods to for-profit recycling businesses when they are attempting to aid charitable nonprofit organizations.

SECTION 2.1.(m) Post-Adoption Contact (S.B. 209 – Kinnaird) – The Commission may study the topic of post-adoption contacts and communication between an adopted child and a birth relative. In conducting the study, the Commission may consider the following:

- (1) The need to establish laws for post-adoption contacts or communication between an adopted child and a birth relative.
- (2) What constitutes post-adoption contacts and communication.
- (3) Any effect post-adoption contacts and communication would have on existing adoption laws.
- (4) The criteria for establishing post-adoption contacts and communication and the contents of any such agreement.
- (5) Any other information the Commission deems relevant.

SECTION 2.1.(n) Sick Leave Bank and Family Leave (S.B. 2007 – Atwater) – The Commission may study the feasibility of the State providing family leave for employees and State policies relating to the voluntary sick leave bank for public school employees. In conducting the study, the Commission may consider the following:

- (1) Evaluate the status of the State's voluntary sick leave bank for public school employees.
- (2) Consider the efficacy of changes in policy designed to make the current sick leave bank more "employee friendly."
- (3) Study sick leave banks and other shared leave programs in other states.
- (4) Evaluate the need for a sick leave bank for teachers and State employees beyond the current voluntary program.
- (5) Study the feasibility of the State providing family leave for employees including paid leave to care for a newborn, newly adopted, or foster child and paid leave due to a serious personal or family member's

health problem. In the course of the study, the Commission shall consider laws from other states regarding (i) family leave, (ii) temporary disability insurance programs that provide family leave, (iii) family leave insurance programs, and (iv) consider additional sources of sick days for the sick leave bank.

- (6) Review any other matter that the Commission finds relevant to its charge.

SECTION 2.1.(o) Effectiveness of the State Purchasing and Contract System (Rand) – The Commission may study the effectiveness of the State purchasing and contract system including its accessibility and impact on the State's small businesses and the participation of minority contractors.

SECTION 2.1.(p) Requirements for Issuance of Building Permits for On-Site Business Installation or Repair of Electrical Equipment – The Commission may study the requirements of current law, G.S. 153A-357 and G.S. 160A-417, concerning issuance of building permits for on-site business installation or repair of electrical equipment. The Commission shall examine whether permits should be waived for installation and repair of electrical equipment by businesses on their own property, if the property is not intended for lease or sale, and if the business employs electricians or mechanics for the purpose of installing or repairing its own electrical equipment.

SECTION 2.1.(q) Legislative Efficiency and Operations (Graham) – The Commission may study the issues surrounding legislative efficiency and operations. The study shall include the feasibility of organizational sessions, session limits, term limits, and legislative pay.

SECTION 2.2. For each Legislative Research Commission committee created during the 2005-2007 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

SECTION 2.3. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 2.4. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III. JOINT LEGISLATIVE HEALTH CARE OVERSIGHT COMMITTEE STUDIES

SECTION 3.1. The Joint Legislative Health Care Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 3.2. Geriatric Care Providers (H.B. 183 – Nye, Clary) – The Committee may study methods to increase the number of geriatric care providers in the State.

SECTION 3.3. Medical Cost Savings (S.B. 581 – Forrester) – The Committee may study a variety of approaches to find medical cost savings and to ensure quality of medical care provided to the citizens of the State.

SECTION 3.4. Regulation of Nurse Practitioner Practice (Nesbitt) – The Committee may study the following:

- (1) Issues surrounding the practice parameters of advanced practice registered nurses (APRNs).
- (2) Relationship between APRNs and physicians.
- (3) Whether APRNs should be regulated through the North Carolina Board of Nursing or the North Carolina Medical Board.
- (4) Any other issue the Commission considers relevant.

SECTION 3.5. Community Health Centers (Kerr) – The Committee may study the need for community health centers, including federally qualified health centers, health centers that meet the criteria for federally qualified health centers, and State-designated rural health centers and public health departments. The Committee shall also study the need for and funding of free clinics, such as W.A.T.C.H. in North Carolina. In conducting the study, the Committee shall examine a range of approaches in depth, including, but not limited to, the following:

- (1) Increasing access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations.
- (2) Establishing community health center services in counties where no such services exist.
- (3) Creating new services or augmenting existing services provided to uninsured or medically indigent patients, including primary care and preventative medical services, dental services, pharmacy, and behavioral health.
- (4) Increasing capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

SECTION 3.6. Hospital Systems (Rand) – The Committee may study issues related to the conversion of county-owned hospitals to private not-for-profit hospitals and the merger and acquisition of health care systems. The Committee shall consider the following issues:

- (1) Long-term financial implications.
- (2) Quality of care.
- (3) An analysis of the effects of preferred provider organizations.
- (4) The implications of government regulations.
- (5) The implications of government paid medical services.

SECTION 3.7. Prescription Drug Cost Management Office (S.B. 424 – Boseman, Atwater) – The Committee may study the feasibility of establishing an Office for Prescription Drug Cost Management ("Office") in the Department of Administration or other appropriate State agency to manage the cost of prescription drugs incurred by State agencies and programs that cover or provide prescription drugs. The responsibilities of the Office shall include negotiating prescription drug price discounts with participating pharmaceutical manufacturers and pharmacists for prescription drugs paid for, in whole or in part, with State funds. As used in this section, "State agency" includes the Teachers' and State Employees' Comprehensive Major Medical Plan. In conducting the study, the Committee shall consider the following:

- (1) The estimated amount that each State agency pays annually for prescription drugs, including any discounts or rebates currently in effect.
- (2) Current contractual obligations of State agencies to pay for prescription drug coverage or purchase.

- (3) Incentives for prescription drug manufacturers and pharmacists to participate in the State prescription drug cost management program.
- (4) Formularies or other methods of containing prescription drug costs currently in effect for State agencies and programs.
- (5) Necessity for and feasibility of interfacing the implementation of the prescription drug cost management program with information management systems currently used by State agencies.
- (6) Experiences of other states in attempting to control prescription drug costs through multistate compacts, bulk purchasing, or negotiated discounts.
- (7) Timeline and funds needed for the establishment of the Office for Prescription Drug Cost Management and implementation of a prescription drug management program.
- (8) Other matters the Committee deems necessary for its study.

SECTION 3.8. Occupational Therapy Licensure Revisions (H.B. 287 – Nye, England, Barnhart, Womble) – The Committee may study the amendment of certain laws relating to the North Carolina Occupational Therapy Act.

SECTION 3.9. Alternatives to State Health Plan for The University of North Carolina (H.B. 775 – Earle, Insko; Kinnaird) – The Committee may study the alternatives to the State Health Plan for The University of North Carolina.

SECTION 3.10. Smoking in Public Places (Holliman) – The Committee may study the issue of smoking in public places. As a part of its study, the Committee may:

- (1) Consider a proposal to ban smoking in all State controlled buildings, and granting local governments the authority to do the same in their buildings.
- (2) Consider a proposal to ban smoking in the workplace.
- (3) Consider repeal of State law that does not allow counties and cities to enact smoking ordinances more restrictive than State law.
- (4) Examine the health factors associated with secondhand smoke and its effect on persons exposed to it.
- (5) Examine whether the practice of separate areas for smoking and nonsmoking is adequate to protect nonsmokers from secondhand smoke.
- (6) Consider whether that should be any exceptions to new smoking restrictions.
- (7) Examine the effects on health and to the economy similar legislation has had in other states.
- (8) Consult with interested parties, such as doctors, the American Lung Association, the Cancer Society, and similar organizations, and invite their participation in the Committee's work as experts.

SECTION 3.11. Rural Health Care Access and Needs (H.B. 797 –Pierce) – The Committee may study, in consultation with the Department of Health and Human Services, Office of Research, Demonstrations, and Rural Health Development, the health care needs in rural areas of the State and other health professional shortage areas of the State without inpatient services and with a high percentage of uninsured residents.

PART IV. JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDIES

SECTION 4.1. The Joint Legislative Transportation Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 4.2. Utility Relocation (H.B. 667 – Cole) – The Committee may study the use of incentives, disincentives, and other contractual measures by the Department of Transportation to expedite relocation of public utilities for highway construction projects.

SECTION 4.3. Nonbetterments (Almond, McComas) – The Committee may study issues related to nonbetterments.

SECTION 4.4. Dedicated Funding Sources for Public Transit (Coates) – The Committee may study the feasibility of a dedicated funding source for public transit and alternative forms of transportation.

PART V. JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE STUDIES

SECTION 5.1. The Joint Legislative Education Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 5.2. Changes in Education Districts (H.B. 1505 – Yongue, Preston, Johnson, Carney) – The Committee may study issues related to population changes in education districts.

SECTION 5.3. Raising the Compulsory School Attendance Age (H.B. 1079 – Parmon, Glazer, Womble, McLawhorn; S.B. 878 – Garrou) – The Committee may study issues related to raising the compulsory school attendance age.

SECTION 5.4. Child Nutrition Services (H.B. 696 – Inkso) – The Committee may study the impact of indirect costs associated with the child nutrition services program.

SECTION 5.5. Class Size Funding Formula for Children With Special Needs (H.B. 693 – Glazier, Parmon) – The Committee may study the need to weight the class-size funding formula to accommodate the learning needs of special populations of children.

SECTION 5.6. Track Students Throughout Education (H.B. 640) – The Committee may study the feasibility of tracking students throughout their education.

SECTION 5.7. Impact of Student Mobility on Academic Performance (H.B. 388 – Folwell; S.B. 171 – Dalton) – The Committee may study the impact of student mobility on academic performance.

SECTION 5.8. Appropriate Education for Suspended Students (H.B. 1747 – Preston, Bell, Parmon, Stam) – The Committee may study the issues concerning appropriate education for suspended students.

SECTION 5.9. Corporal Punishment Policies (H.B. 1462 – Alexander) – The Committee may study policies related to corporal punishment.

SECTION 5.10. Strategies for Targeting Educational Programs and Resources (Swindell, Lucas, Garrou) – The Committee shall study strategies for targeting educational programs and resources to improve K-12 education for all students. In the course of the study, the Committee shall do all of the following:

- (1) Review existing funding formulas to ensure that resources are targeted where they are most needed and, if necessary, propose modifications to these formulas. This review shall include an analysis of local ability to pay based on measures of local wealth and local willingness to pay for K-12 education.
- (2) Review existing initiatives and curricula, for early childhood through high school, and recommend ways to reduce duplicative efforts and make better use of finite resources.
- (3) Explore local actions and efforts to supplement State educational resources.
- (4) Examine how other states work with local governments to ensure adequate resources are available for the operational and capital needs of the public schools.

SECTION 5.11. Workforce Preparation in the Public Schools (S.B. 898 – Brown) – The Committee may study workforce preparation in the public schools.

SECTION 5.12. Community College Tuition Reciprocity (S.B. 779 – Snow) – The Committee may study issues relating to community college tuition reciprocity with other states.

SECTION 5.13. Information Requirements for School Admission/Assignment (H.B. 1480 – Folwell) – The Committee may study information requirements for school admission and assignment.

SECTION 5.14. Joint Education Leadership Team for Disadvantaged Students (Carney, Yongue; Clodfelter) – The Committee may study establishing a Joint Education Leadership Team for Disadvantaged Students.

SECTION 5.15. Education Facility Financing (H.B. 1272 – Yongue) – The Committee may study issues related to education facility financing.

SECTION 5.16. School Psychologists (Swindell) – The Committee may study issues related to the compensation of school psychologists, including annual salary supplements for licensed school psychologists who are employed by local school administrative units and certified by the National School Psychology Certification Board or other equivalent national certifying organization.

SECTION 5.17. Civics Education (H.B. 2469 – Glazier) The Committee may study issues related to civics education.

SECTION 5.18. Local School Construction Financing (H.B. 2189 –Yongue) The Committee may study issues related to local school construction financing.

SECTION 5.19. Teacher Assistant Salary Schedule (H.B. 2842 – McLawhorn) The Committee may study issues related to the teacher assistant salary schedule.

SECTION 5.20. Tax on Lottery Winnings/Community College Equipment (H. B. 1991 – Yongue, Tolson, Jeffus) – The Committee may study issues related to earmarking the tax collected on lottery winnings for community college equipment.

SECTION 5.21. Sales Tax Exemption for Local School Units (H.B. 2460 – Yongue, Carney, England, and Gibson) – The Committee may study issues related to providing for an exemption from the sales and use tax for local school administrative units.

SECTION 5.22. High School Graduation/Drop out Rate (Parmon, Weiss) – The Committee may study issues related to high school graduation and drop out rates.

SECTION 5.23. Sound Basic Education (Lucas) – The Committee may study strategies and resources that contribute to the opportunity for North Carolina students to obtain a sound basic education.

PART VI. JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE STUDIES

SECTION 6.1. The Joint Legislative Utility Review Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 6.2. Article 1 of Chapter 62A (H.B. 1638 – Saunders, Brubaker) – The Committee may study the following issues related to Article 1 of Chapter 62A of the General Statutes:

- (1) Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.
- (2) Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.
- (3) Whether to adopt a Statewide uniform 911 charge.
- (4) Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.
- (5) Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.
- (6) Any other issues related to the Article the Committee determines are relevant.

PART VII. REVENUE LAWS STUDY COMMITTEE STUDIES

SECTION 7.1. The Revenue Laws Study Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 7.2. Property Taxes (S.B. 623 – Jacumin) – The Committee may study the valuation of partially improved, undeveloped lots in subdivisions.

SECTION 7.3. Administrative and Judicial Review of Tax Cases (S.B. 840 – Kerr) – The Committee may study the administrative and judicial review of tax cases.

SECTION 7.4. State Business Taxation (S.B. 916 – Clodfelter) – The Committee may study reforming and simplifying State taxation of business enterprises.

SECTION 7.5. Sound Management Program for Forestland (S.B. 790 – Berger of Rockingham) – The Committee may study the need for providing owners of forestland more flexibility in demonstrating that their forestland is operated under a sound management program in order to qualify for present-use value property tax status.

SECTION 7.6. Tax Refund Donation for Prostate Cancer (S.B. 643 – Hoyle) – The Committee may study allowing taxpayers to contribute income tax refunds for prostate cancer research.

SECTION 7.7. Housing Authority Tax Exemptions (Ross, Malone, Cowell) – The Committee may study housing authority tax exemption issues.

SECTION 7.8. Tax Refund Contributions to Charitable Causes (Atwater) – The Committee may study the issue of providing space on individual income tax forms for taxpayers to make a contribution of all or part of their refunds to support various charitable causes. The study shall specifically include the following issues:

- (1) A method for determining which causes shall be eligible to receive contributions of refunds and an efficient mechanism for distributing funds collected from contributions of refunds.
- (2) A consideration of whether taxpayers should be able to contribute their refunds to specific charitable causes or to a fund from which contributions are distributed equally among all eligible causes.
- (3) The administrative or fiscal burdens placed on the State for serving as a collection agent for contributions of refunds.
- (4) The effect on rates of compliance with tax laws of expanding the tax forms to accommodate contributions of refunds.

SECTION 7.9. Income Tax Refund Contribution Election (Coleman) – The Committee may study the feasibility of creating additional income tax refund contribution elections, also known as tax "check-offs". The study shall specifically address:

- (1) The amount of funds raised by any proposed refund contribution election.
- (2) Experience of other states in creating similar refund contribution elections.
- (3) Practical issues in creating new refund contribution elections.
- (4) Pros and cons of any proposed refund contribution election.
- (5) Any related issue.

SECTION 7.10 Intermodal Rail Facility (Clodfelter, Gibson) – The Committee may study the issue of creation of an intermodal rail facility in the State. As a part of its study, the Committee shall examine all of the following:

- (1) The multiple logistical benefits of the project, as a way to utilize and enhance the current intermodal port, highways, and rail transportation system of the State and region.
- (2) Improvements to traffic flow, transportation, safety, and air quality that the project will provide.
- (3) Economic benefits of the project, including increased State tax revenue and job creation resulting from the facility.
- (4) The funding contributions of private and public entities for the facility, and the current gap in needed funding for the project.
- (5) Solutions to the funding gap in order to expedite construction of the facility and insure the many benefits of the project to the citizens of the State are realized.

The Committee shall complete its study, propose a funding solution for this project, and report its findings to the General Assembly by January 1, 2007.

SECTION 7.11 Sales and Income Taxes. (H.B. 1649 –LaRoque) – The Committee may study issues related to comprehensive reform and simplification of the existing State tax structure.

PART VIII. ENVIRONMENTAL REVIEW COMMISSION STUDIES

SECTION 8.1. The Environmental Review Commission may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 8.2. Mercury Reduction and Education (H.B. 1531 – Harrison, Bordsen, Martin, Fisher) – The Commission may study measures to reduce the quantity

of mercury that is released into the environment, that impacts natural resources, and that harms the public health of the citizens of the State, including prohibitions on the sale of certain mercury-containing products, prohibitions on the use of mercury in primary and secondary education, labeling of certain mercury-containing products, State purchase of products that contain no mercury, and public education on the hazards of mercury release and proper methods of mercury disposal. If the Environmental Review Commission undertakes this study, it may refer to the mercury reduction and education measures set out in the First Edition of House Bill 1531, as introduced to the 2005 General Assembly, and mercury reduction and education measures adopted by other states.

SECTION 8.3.(a) Abandoned Mobile Home (Haire) The Commission may study issues related to abandoned manufactured homes. The Commission may specifically study: the impacts that abandoned manufactured homes have with regard to public health and safety, the environment, and the State's scenic resources; removal and transportation issues related to abandoned manufactured homes; solid waste disposal issues related to abandoned manufactured homes, including costs of disposal, removal of hazardous substances, and opportunities for reuse and recyclability of components of deconstructed homes; design of local government programs and regional approaches for the proper disposal of abandoned manufactured homes; and the feasibility and advisability of imposing an advance disposal tax on the sale of new and used manufactured homes to fund deconstruction of abandoned manufactured homes.

SECTION 8.3.(b) Subcommittee. – In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of manufactured homes, solid waste management, local government, affordable housing issues, and tax collection matters, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. At a minimum, the Cochairs shall appoint four members at large, who may be members of the Commission, in addition to the following members:

- (1) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.
- (2) The Executive Director of the North Carolina League of Municipalities, or the Director's designee.
- (3) The President of the North Carolina Tax Collector's Association, or the President's designee.
- (4) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.
- (5) The Director of the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources, or the Director's designee.
- (6) The Executive Director of the North Carolina Manufactured Housing Institute, or the Director's designee.
- (7) The Executive Director of the Community Reinvestment Association of North Carolina, or the Director's designee.
- (8) Secretary of the Department of Revenue, or the Secretary's designee.
- (9) A manufacturer designated by the North Carolina Manufactured Housing Institute.

- (10) A retail representative designated by the North Carolina Manufactured Housing Institute.

PART IX. JOINT LEGISLATIVE GROWTH STRATEGIES OVERSIGHT COMMITTEE STUDIES

SECTION 9.1. The Joint Legislative Growth Strategies Oversight Committee may study the issues of extraterritorial operations of municipal public enterprises (S.B. 858 – Clodfelter).

SECTION 9.2. Section 3.3 of S.L. 2001-491 reads as rewritten:

"**SECTION 3.3.** This Part becomes effective January 15, 2002, and expires January 16, ~~2005~~, 2007. Prior to its expiration on January 16, ~~2005~~, 2007, the Committee shall report to the General Assembly on its activities conducted pursuant to this Part."

PART X. HOUSE SELECT STUDY COMMISSION ON A MANDATORY COST-OF-LIVING INCREASE FOR RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM (H.B. 1653 – B. Allen, Coleman, Farmer-Butterfield, Faison)

SECTION 10.1. There is established the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System.

SECTION 10.2. The Speaker of the House of Representatives shall appoint 10 members of the House of Representatives to serve as members of the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System. All 10 members of the Commission shall be members of the House of Representatives at the time of appointment. One member shall have served within the last two years as a chair, cochair, or vice-chair of the House of Representatives Committee on Pensions and Retirement. The Speaker of the House of Representatives shall designate a chair of the Commission.

SECTION 10.3. The Commission shall study the cost and feasibility of an automatic annual retirement allowance increase that equals the prior year ratio of the unadjusted 12-month (December to December) Consumer Price Index for All Urban Consumers. The Commission shall consider the benefit to retirees, the cost and actuarial soundness of a mandatory increase, and shall determine whether a mandatory increase adheres to sound retirement and pension policy. In conducting the study, the Commission shall obtain an actuarial analysis and appropriate input from the Retirement Systems Division of the Department of State Treasurer.

SECTION 10.4. The Commission may contract for consultant services as provided by G.S. 120-32.02. 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. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The appointing authority shall fill vacancies.

The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19, and G.S. 120-19.1 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.

SECTION 10.5. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2007 General Assembly. All reports shall be filed with the Speaker of the House of Representatives and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

SECTION 10.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART XI. DEPARTMENT OF TRANSPORTATION STUDY OF VOLUNTARY DISABILITY DESIGNATION ON DRIVERS LICENSES.

SECTION 11. The Division of Motor Vehicles of the Department of Transportation shall study a method to implement a voluntary disability designation on drivers licenses, State-issued identification cards, and vehicle registration. The method should allow persons with developmental disabilities or their families, or both, to request the placement of a designation indicating the disability or the possible presence in their vehicle of a person with a disability. The Division shall report to the General Assembly, no later than June 1, 2007, on the method developed and the schedule for implementation of the designation.

PART XII. HOUSE TASK FORCE TO REVIEW AND RESOLVE CONFLICT IN NORTH CAROLINA LAW OVER THE RECOVERY OF COSTS IN CIVIL CASES. (H.B. 2070 – Glazier)

SECTION 12.1. A House of Representatives Task Force on the Recovery of Costs in Civil Cases is established to review and recommend a resolution to the conflict in North Carolina law regarding the recovery of costs in a civil case. Specifically, the Task Force on the Recovery of Costs in Civil Cases shall study the conflict that exists between G.S. 6-20 and G.S. 7A-305, and the appellate cases interpreting those statutes, and recommend revisions to one or both statutes to resolve that conflict.

SECTION 12.2. The Speaker of the House of Representatives shall appoint to serve on the Task Force six members of the House of Representatives and three public members: one member of the North Carolina Academy of Trial Lawyers, one member of the North Carolina Association of Defense Attorneys, and one member of the North Carolina Bar Association. The Speaker shall appoint a chair from the Task Force membership. The Task Force shall meet upon the call of its chair. A quorum of the Committee shall be a majority of its members.

SECTION 12.3. Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Task Force to aid in its work. The Task Force may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Task Force may meet at various locations around the State to promote greater public participation in its deliberations. Subject to

the approval of the Legislative Services Commission, the Task Force may meet in the Legislative Building or the Legislative Office Building. The Task Force, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 12.4. The Task Force shall report the results of its review and its recommended resolution to the conflict to the Speaker of the House of Representatives by December 31, 2006.

SECTION 12.5. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART XIII. WILDLIFE RESOURCES COMMISSION (H.B. 505 – Sherrill, McComas, Gibson, Preston)

SECTION 13.1. The Wildlife Resources Commission shall study the issue of allowing hunting on Sundays at a limited number of State game lands. In conducting its study, the Commission shall consider, but is not limited to, the following issues:

- (1) Individual game land suitability for Sunday hunting, including the status of resident wildlife species, proximity to population centers, and range of recreational opportunities available.
- (2) Allowable hunting activities, including methods of taking and the use of dogs.
- (3) Limiting hunting privileges to avoid conflict with religious services.
- (4) The needs of persons pursuing nonhunting outdoor recreational activities, including private landowners, family picnics, hiking, canoeing, birding, horseback riding, climbing, and biking.

SECTION 13.2. In conducting the study, the Commission shall obtain input from representatives of interested parties, including landowners, the North Carolina Wildlife Federation, the Sierra Club and other conservation organizations, the North Carolina Farm Bureau and other agricultural organizations, the North Carolina Horse Council, hunting clubs and organizations, controlled hunting preserve operators, religious organizations, and other outdoor recreational clubs and organizations.

SECTION 13.3. As a part of the study, the Commission shall conduct at least one public hearing in each of its nine regions on the issue of allowing Sunday hunting on selected game lands.

SECTION 13.4. The Wildlife Resources Commission shall report its findings and recommendations, including a recommendation whether to amend, repeal, or leave intact the existing ban on Sunday hunting, to the Joint Legislative Commission on Governmental Operations no later than March 15, 2007.

PART XIV. JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES STUDIES

SECTION 14.1. The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services may study the topics

listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 14.2. Mental Health Parity (H.B. 893 – Alexander) – The Committee may study issues related to mental health parity.

SECTION 14.3. Funding for Area and County Program Administration (Holloman) – The Committee may, in consultation with the Department of Health and Human Services, conduct an analysis of funding for administration for area and county mental health, developmental disabilities, and substance abuse services programs.

PART XV. STUDY COMMISSION ON STATE CONSTRUCTION INSPECTIONS (Owens; S.B. 192 – Hagan)

SECTION 15.1. There is created the Legislative Study Commission on State Construction Inspections. The Commission shall consist of 14 members appointed as follows:

- (1) Five voting members appointed by the Speaker of the House of Representatives, one of whom is also a member of the Higher Education Bond Oversight Committee.
- (2) Five voting members appointed by the President Pro Tempore of the Senate, one of whom is also a member of the Higher Education Bond Oversight Committee.
- (3) Four nonvoting ex officio members as follows or their designees: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of Administration, and the Secretary of Health and Human Services.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Commission. The appointing authority shall fill vacancies. The Commission shall meet upon the call of the cochairs.

SECTION 15.2. The Commission shall study the following:

- (1) The scope and nature of each type of inspection of private and public construction projects performed or required by State agencies.
- (2) The extent to which State inspections overlap with inspections performed by local governments.
- (3) The total cost of the State's inspection of public and private construction projects.
- (4) The comparative efficiencies and efficacies of each type of inspection of private and public construction projects performed or required by State agencies to determine whether:
 - a. The inspections can be combined to save the costs of administration and to limit any hardships on public and private entities engaged in construction projects.
 - b. Any inspections should be otherwise modified in scope or eliminated.
- (5) The level of training of the various inspectors in the State agencies and whether the training is satisfactory for the types of inspections performed.
- (6) Whether changes in the process to review plans submitted to and approved by the Commissioner of Insurance and the Department of Administration could enhance cost savings and promotion of one-time completion of projects.

- (7) Any other matter related to increasing the efficiency and efficacy of the State's inspection of public and private construction projects.

SECTION 15.3. The Commission may contract for consultant services as provided by G.S. 120-32.02. 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. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives' and the Senate's Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in accordance with G.S. 120-3.1, 138-5, and 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 15.4. The Commission may report its findings, conclusions, and recommendations, including any legislative proposals by the convening of the 2007 General Assembly. The Commission shall expire on that date, or upon filing its final report, whichever occurs earlier.

SECTION 15.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART XVI. MERGER OF ECOLOGICAL ENHANCEMENT PROGRAM AND THE CLEAN WATER MANAGEMENT TRUST FUND (Jenkins)

SECTION 16. The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall jointly study the merger of the organization and functions of the Ecological Enhancement Program with the Clean Water Management Trust Fund. The Commission and the Committee may hire consultants to assist with the study. The final report shall be made to the 2007 General Assembly.

PART XVII. STUDY COMMISSION ON STATE DISABILITY INCOME PLAN AND OTHER RELATED PLANS

SECTION 17.1. There is established a Study Commission on the State Disability Income Plan and Other Related Plans.

SECTION 17.2. The Commission shall be comprised of 13 members as follows:

- (1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.

- (2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.
- (3) The State Treasurer or the Treasurer's designee.
- (4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.
- (5) The Chair of the North Carolina Industrial Commission or the Chair's designee.
- (6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.
- (7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

Any vacancy shall be filled by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House shall each appoint a co-chair. The Commission shall meet at the call of the co-chairs.

SECTION 17.3. The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

SECTION 17.4. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

SECTION 17.5. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

SECTION 17.6. The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

SECTION 17.7. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 17.8. The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2007.

SECTION 17.9. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XVIII. STUDY NO-FAULT COMPENSATION FOR INJURIES TO ELDERLY AND DISABLED PERSONS (S.B. 1041 – Clodfelter)

SECTION 18. The Commissioner of Insurance, the North Carolina Industrial Commission, and the Department of Health and Human Services may jointly study the utility, efficacy, and advisability of creating a system of no-fault compensation, with such compensation based on scheduled amounts and subject to limits on total compensation paid, for injuries resulting from regular and ordinary course of care provided at nursing homes, homes for the elderly, other long-term care facilities, and assisted living facilities. If the study is conducted, the results of this study, including findings and recommendations for suggested legislation, shall be reported to the 2007 General Assembly upon its convening.

PART XIX. UNC BOARD OF GOVERNORS STUDY COMMISSION

SECTION 19.1. There is created the UNC Board of Governors Study Commission. The Commission shall consist of 10 members appointed as follows: five by the President Pro Tempore of the Senate and five by the Speaker of the House of Representatives. 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. Vacancies on the Commission shall be filled by the appointing authority. The Commission shall meet upon the call of the cochairs. A majority of the members of the Commission shall constitute a quorum.

SECTION 19.2. The Commission shall continue the work of prior UNC Board of Governors Study Commissions and study the method of election or appointment of members of the Board of Governors, the length of members' terms, the number of terms a member may serve, and the size of the Board of Governors. As part of the study, the Commission may examine the governing boards of other states' institutions of higher education. The Commission shall report its findings and any recommendations to the 2007 General Assembly. The Commission shall terminate upon the filing of its final report.

SECTION 19.3. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 19.4. Subject to the approval of the Legislative Services Commission, the Commission may meet in the State Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Directors of Legislative

Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 19.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XX. JOINT LEGISLATIVE COMMISSION ON HEALTH INSURANCE ACCESSIBILITY (Kerr)

SECTION 20.1. There is established in the General Assembly a Joint Legislative Commission on Health Insurance Accessibility.

SECTION 20.2. Membership. – The Commission shall be composed of 16 members as follows:

- (1) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

Vacancies on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 20.3. The Commission shall study the legal, fiscal, and policy implications of various means of increasing accessibility to health insurance. The Commission may study the creation of a North Carolina Health Insurance Risk Pool (H.B. 1535 – Insko, Holliman) and a North Carolina Fair Share Health Insurance Access Program (H.B. 2860 – Holliman).

The study shall specifically address strategies for increasing accessibility to health insurance by small employer groups, self-employed individuals, and individuals who are employed but uninsured. The study of small employer access shall include the following:

- (1) A review of the number of small employers (50 or fewer employees) in this State, grouped by industry and volume of business; the number of small employers that offer comprehensive health insurance coverage to their employees; and the average premium charged for comprehensive health insurance coverage available to small employer groups in this State, as compared to premiums for comparable coverage in the Southeast region and other areas of the United States.
- (2) A review of the participation rates, premiums and cost-sharing, and coverage options offered under the North Carolina Small Employer Group Health Coverage Reform Act, Part 5, Article 50 of Chapter 58 of the General Statutes.
- (3) An analysis of the Healthy New York Program administered by the State of New York, or similar program, that combines the provision of a standardized, streamlined benefit package with state-funded

reinsurance in the form of a stop-loss fund that would reimburse insurers for the costs of claims within a defined claims corridor. In conducting the analysis the Commission shall review and consider the proposed committee substitute for Senate Bill 255, 2005 Regular Session of the General Assembly. The analysis shall also review the amount in state funds appropriated for the Healthy New York Program since its inception, and corresponding participation rates by employers and eligible individuals.

- (4) An analysis of providing additional tax benefits for small businesses that provide health insurance coverage for their employees.

SECTION 20.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Legislative Services Office shall provide adequate staff for the Commission. The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b). The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 20.5. The Commission shall make a final report of its findings and recommendations to the 2007 General Assembly. The interim report may and the final report shall include findings and recommendations on:

- (1) Whether the State should provide for the implementation of a small employer health insurance program that is supported with State funds to ensure comprehensive coverage and affordability for small employer groups, self-employed individuals, and employed but uninsured individuals. If the Commission recommends implementation, the recommendation should specifically address strategies for avoiding adverse selection and crowd-out, eligibility factors such as family income, limitations on claims thresholds and corridors for stop-loss coverage, benefit levels and limitations, and the feasibility and advisability of establishing a State high-risk pool.
- (2) An estimate of the cost to the State to support stop-loss coverage, high-risk coverage, or other approaches to ensuring small employer health insurance access and affordability.
- (3) Other findings and recommendations relevant to the purposes of the study.

The Commission shall terminate upon the filing of its final report or the adjournment of the 2007 General Assembly.

SECTION 20.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXI. STATE FACILITIES MASTER PLAN/DIX COMPLEMENTARY USES

SECTION 21. The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

- (1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.
- (2) The financial feasibility of the various uses.
- (3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.
- (4) Administrative or governance structures to implement the uses.

The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007.

PART XXII. COMPENSATION OF STATE ELECTED AND APPOINTED OFFICIALS STUDY COMMISSION (Rand)

SECTION 22.1. There is established the Compensation of State Elected and Appointed Officials Study Commission.

SECTION 22.2. The Commission shall consist of 15 members appointed as follows:

- (1) Two members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) Three members appointed by the President Pro Tempore of the Senate who are representatives of private business with experience in evaluating and establishing compensation for management and executives.
- (4) Three members appointed by the Speaker of the House of Representatives who are representatives of private business with experience in evaluating and establishing compensation for management and executives.
- (5) Five members appointed by the Governor. In making the appointments, the Governor shall consider representatives of private business with experience in evaluating and establishing compensation for management and executives.

The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 22.3. The following State elected and appointed officials shall be included in the study by the Commission: the Governor and Lieutenant Governor; the Council of State; the Governors Cabinet; Members of the General Assembly; Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Superior Court, and Judges of the District Court.

SECTION 22.4. The Commission shall study the matters that impact compensation and benefits for State elected and appointed officials and may include the following:

- (1) Whether the annual compensation for State elected and appointed officials is equivalent to the compensation paid to comparable members of private businesses in the State.
- (2) Whether the annual compensation for State elected and appointed officials is at a sufficient level to continue to attract highly qualified individuals to commit to public service to the State without requiring those individuals to experience direct financial hardships.
- (3) The impact of inflationary forces on that compensation.
- (4) The effect, where appropriate, of comparable positions in the United States Government and the inclusion of established adjustments and increases in the compensation of comparable federal positions.
- (5) Whether the compensation and benefits, including family leave policies, are competitive for State elected and appointed officials as compared to comparable positions in the private sector.
- (6) Actions that would attract and retain State elected and appointed officials with special experience, management and leadership positions in the private sector for comparable State elected and appointed positions.
- (7) Any other matters relating to the compensation of State elected and appointed officials.

SECTION 22.5. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 22.6. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly upon its convening. The Commission shall terminate upon the filing of its final report.

SECTION 22.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this part.

PART XXIII. DEPARTMENT OF CULTURAL RESOURCES STUDY GRAVEYARD OF THE ATLANTIC MUSEUM

SECTION 23. The Department of Cultural Resources shall study the feasibility of designating the Graveyard of the Atlantic Museum as a State Historic Site or a Grassroots Science Museum. The Department shall submit the results of its study to the 2007 General Assembly upon its convening.

PART XXIV. JOINT LEGISLATIVE OVERSIGHT COMMISSION ON INFORMATION TECHNOLOGY STUDIES (Tolson, Malone)

SECTION 24.1. There is established the Legislative Study Commission on Information Technology. The Commission shall consist of 14 members, appointed as follows:

- (1) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) Two members of the general public with experience in information technology appointed by the President Pro Tempore of the Senate.
- (4) Two members of the general public with experience in information technology appointed by the Speaker of the House of Representatives.

Vacancies in membership shall be filled by the original appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

SECTION 24.2. The Commission shall review the newly revised North Carolina Education Technology Plan developed by the North Carolina State Board of Education. The Commission's review shall also include best practices for using technology to enhance teaching and learning in North Carolina schools. The Commission shall review existing research-based best practices such as the IMPACT model, NC Wise Owl, and successful 1:1 (computer to student) initiatives across the State and nation. The Commission shall receive recommendations from the Business and Education Technology Alliance, the E-Learning Commission, the business community, and the North Carolina Center for 21st Century Skills.

SECTION 24.3. The Commission, while in discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 24.4. The Commission shall submit a final written report of its findings and recommendations by February 1, 2007. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

SECTION 24.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXV. HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION TASK FORCE (Dorsett)

SECTION 25.1. Task Force Established; Membership. – The Department of Administration shall establish a Historically Underutilized Business Task Force. The Task Force shall consist of 15 members as follows:

- (1) One member appointed by the North Carolina League of Municipalities.
- (2) One member appointed by the North Carolina Association of County Commissioners.
- (3) One member appointed by the North Carolina School Boards Association.
- (4) One member appointed by the North Carolina Institute for Minority Economic Development.
- (5) Three members appointed by the North Carolina Minority and Women's Business Enterprise Coordinator's Network.
- (6) Eight members appointed by the Office of Historically Underutilized Business, two of whom shall be representatives of the Office, one of whom shall be a minority business owner, one of whom shall be a female business owner, one of whom shall be a disabled business owner, and three of whom shall be public members.

Vacancies in membership shall be filled as provided in this section.

SECTION 25.2. Cochairs; Meetings. – The Task Force shall have two cochairs appointed by the Secretary of Administration from among the members of the Task Force. The Task Force shall meet at least quarterly upon the call of the cochairs.

SECTION 25.3. Quorum; Voting. – A quorum of the Task Force shall consist of five members. All action shall be taken by a majority vote.

SECTION 25.4. Duties. – The Task Force shall propose criteria and procedures for: (i) the certification of businesses under G.S. 143-48 and G.S. 143-128.2 as Historically Underutilized Businesses; (ii) the creation and maintenance of a database of the businesses certified; and (iii) any other matters related to the certification of businesses as authorized in this section. In determining ownership of a business for purposes of certification, the Task Force shall use the definitions provided in G.S. 143-48 and G.S. 143-128.2.

SECTION 25.5. Support. – The Department of Administration shall provide meeting facilities and staff support for the Task Force. The Task Force may also seek other assistance, including technical, business, and managerial assistance.

SECTION 25.6. Report. – The Task Force shall report its proposed criteria and procedures to the Secretary of Administration on or before November 1, 2007, at which time the Task Force shall terminate.

PART XXVI. SMART START AND CHILD CARE FUNDING STUDY (Hagan)

SECTION 26.1. There is established a Smart Start and Child Care Funding Study Commission.

SECTION 26.2. The Commission shall be composed of 15 members as follows:

- (1) Four members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

- (3) A representative of the North Carolina Partnership for Children appointed by the President Pro Tempore of the Senate.
- (4) The Secretary of the Department of Health and Human Services or the Secretary's designee.
- (5) A Department of Social Services County Director appointed by the Speaker of the House of Representatives.
- (6) A Department of Public Health County Director appointed by the President Pro Tempore of the Senate.
- (7) A representative of a Local Partnership for Children appointed by the Speaker of the House of Representatives.
- (8) One representative from a private for-profit day care appointed by the President Pro Tempore of the Senate and one representative from a private not-for-profit day care appointed by the Speaker of the House of Representatives.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 26.3. The Commission shall invite the Secretary of Health and Human Services to attend each meeting of the Commission and encourage the Secretary's participation in the Commission's deliberations.

SECTION 26.4. The Commission shall study the funding of the North Carolina Partnership for Children. In conducting the study, the Commission shall consider the following:

- (1) The current funding system of the North Carolina Partnership for Children.
- (2) Any strategies for achieving full funding and full service for North Carolina's young children and families.
- (3) Funding equity among all counties and local partnerships.
- (4) Any other information the Commission deems relevant in providing services to young children and families including child care services.

SECTION 26.5. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Commission shall meet at various locations around the State in order to promote greater public participation in its deliberations. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 26.6. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly. Upon the earlier of the filing of its final report or the convening of the 2007 General Assembly, the Commission shall terminate.

SECTION 26.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this part.

PART XXVII. STUDY COMMISSION ON ECONOMIC DEVELOPMENT INFRASTRUCTURE

SECTION 27.1. There is created the Study Commission on Economic Development Infrastructure. The Commission shall consist of 32 members as follows:

- (1) Sixteen members appointed by the President Pro Tempore of the Senate.
- (2) Sixteen members appointed by the Speaker of the House of Representatives.

SECTION 27.2. At least half of the members appointed to the Commission by the President Pro Tempore of the Senate, and at least half of the members appointed to the Commission by the Speaker of the House of Representatives shall be persons who are not members of the General Assembly and who are either actively engaged in economic development or C-Level Executives of private corporations.

SECTION 27.3. The President Pro Tempore of the Senate shall appoint two cochairs of the Commission, and the Speaker of the House of Representatives shall appoint two cochairs of 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 27.4. The Commission shall examine the existing infrastructure for the delivery of economic development, including the many entities involved in economic development. The Commission shall develop a plan to restructure and consolidate the infrastructure for the delivery of economic development to improve its organization and effectiveness. The Commission shall specifically examine the role of the following in the delivery of economic development:

- (1) The Department of Commerce.
- (2) The regional councils of government created pursuant to G.S. 160A-470.
- (3) The Economic Development Board created pursuant to G.S. 143B-434. The Commission shall consider whether the Economic Development Board, which is currently advisory in nature, should be reconstituted and given responsibility for policy development or regulatory authority.
- (4) The regional planning and economic development commissions created pursuant to Article 2 of Chapter 158 of the General Statutes. The Commission shall consider whether regional planning and economic development commissions should be given greater responsibility for marketing and business recruitment.

SECTION 27.5. The Commission may also examine the feasibility of establishing a North Carolina Economic Disaster Task Force.

SECTION 27.6. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 27.7. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 27.8. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 27.9. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXVIII. TRAINING NEEDS OF THE MOTORSPORTS INDUSTRY

SECTION 28. The State Board of Community Colleges (State Board) shall study the issues surrounding the creation of a modern multiuse motorsports specialized training program and the training needs of the motorsports industry. In conducting the study, the State Board shall create a consortium of community colleges to address the training needs of industry members and to direct training programs to meet those needs. The consortium members shall consist of Catawba Valley Community College, Central Piedmont Community College, Davidson Community College, Forsyth Technical Community College, Halifax Community College, Rowan-Cabarrus Community College, and Wilkes Community College. Forsyth Technical Community College shall be the lead community college in the consortium for management and operations purposes. The consortium of community colleges shall focus its training efforts to provide specialized motorsports workforce training and to help create new jobs at the Advanced Vehicle Research Center located in Northampton County. If the motorsports industry finds that additional training at the university level would be beneficial to the industry, the State Board may work with the Board of Governors of The University of North Carolina and motorsports industry to determine how to best meet those needs. The State Board shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Education Oversight Committee on or before February 1, 2007.

PART XXIX. INLAND PORT (Dalton)

SECTION 29. The Institute for the Economy and the Future of Western North Carolina University, in cooperation with the North Carolina Regional Economic Development Commission, known as AdvantageWest, shall study the feasibility of establishing an inland port within the twenty three county region of the Commission.

The Commission shall complete the report and submit it to the General Assembly on or before May 1, 2007.

PART XXX. STUDY MITIGATION OF POTENTIAL FLOODING IN CERTAIN AREAS (H.B. 24 – Gillespie; Goforth, Rapp)

SECTION 30. The Department of Environment and Natural Resources shall study the causes of the flooding in Canton, Biltmore Village, Blue Ridge Paper Company, and the City of Newland to determine what measures can be taken to prevent or mitigate the flooding potential in those areas. The Department may request the assistance of the United States Army Corps of Engineers in this study. The Department of Environment and Natural Resources shall report its findings to the 2007 General Assembly.

PART XXXI. STUDY THE ORGANIZATION OF THE GENERAL COURT OF JUSTICE INTO DISTRICTS AND DIVISIONS (S.B. 173 – Bingham)

SECTION 31. The North Carolina Courts Commission shall study the current state of the General Court of Justice, focusing on workloads, case backlogs, and other issues relevant to the efficient administration of justice and determine whether the current organization of the State into judicial divisions, superior court districts, district court districts, and prosecutorial districts is in need of revision or adjustment in order to better serve the interests of justice. The Commission shall report its findings and recommendations to the 2007 General Assembly.

PART XXXII. STUDY INHERENTLY DANGEROUS ANIMALS (S.B. 1032 – Garwood)

SECTION 32.1. The Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, shall study the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while also protecting the welfare of inherently dangerous animals. In developing recommendations, the Department shall consult with the following entities or groups, or appropriate representatives of those entities or groups:

- (1) The Department of Agriculture and Consumer Services.
- (2) The Division of Public Health of the Department of Health and Human Services.
- (3) The North Carolina State University College of Veterinary Medicine.
- (4) The State Animal Response Team.
- (5) Local law enforcement officials.
- (6) Local animal control officials.
- (7) Wild animal breeders.
- (8) Exotic pet hobbyists.
- (9) Commercial pet retailers.
- (10) Small zoo owners.
- (11) Humane organizations.
- (12) Any other entities or groups whose interests may be affected by proposed regulations.

SECTION 32.2. The Department shall report its findings to the General Assembly no later than the convening of the 2007 General Assembly.

SECTION 32.3. The report made by the Department of Environment and Natural Resources shall include:

- (1) A list of the types of animals that possess such inherently dangerous characteristics that they should not be owned or possessed by persons who do not have special expertise or training, and a determination as to whether these animals should be grouped into classes for differential treatment based upon the nature and extent of the threat they pose to the public. This list should also include information about the nature of the dangers posed by each type of animal.
- (2) A suggested means for regulating ownership of certain animals, including a means of enforcing any proposed restrictions on the ownership or possession of those animals. This portion of the report may include an evaluation of regulations in place in other jurisdictions that have proven to be effective in protecting the public from inherently dangerous animals.
- (3) A plan for addressing inherently dangerous animals that are indigenous species within the jurisdiction of the Wildlife Resources Commission under Article 22 of Chapter 113 of the General Statutes and a consideration as to whether any potential legislation should broadly address the keeping of any wildlife as pets, whether indigenous or not and whether inherently dangerous or not. This portion of the report should result from extensive consultation with the Wildlife Resources Commission.
- (4) A recommendation as to whether persons owning or possessing animals covered by any proposed restrictions should be grandfathered in under a regulatory scheme and the appropriate means of grandfathering those persons in, including consideration of whether certain animals are so threatening to the public safety that the grandfathering of untrained owners or possessors should not be allowed under any circumstances.
- (5) A recommended list, as comprehensive as possible, of persons and entities that should be exempted from the proposed restrictions on ownership or possession of the animals covered by any proposed restrictions, such as zoos, veterinary hospitals, wildlife sanctuaries, research institutions, and the like.

PART XXXIII. STATE FAIR HOUSING ACT STUDY (Kinnaird)

SECTION 33. The North Carolina Human Relations Commission shall study whether the State Fair Housing Act should be amended to make it an unlawful discriminatory housing practice to refuse to enter into a residential real estate transaction with a person based upon the fact that the person receives public assistance due to age or physical or mental disability. In studying this issue, the Commission shall review the laws of other states related to housing discrimination and determine the extent to which certain forms of public assistance are protected under those laws. While conducting the study, the Commission shall consult with representatives from the

residential real estate and residential rental community. The Commission shall report its findings and any recommendations to the 2007 General Assembly upon its convening.

PART XXXIV. STUDY YOUTHFUL OFFENDERS (H.B. 1298 – Bordsen)

SECTION 34.1. The North Carolina Sentencing and Policy Advisory Commission may study issues related to the conviction and sentencing of youthful offenders aged 16 to 21 years, to determine whether the State should amend the laws concerning these offenders, including, but not limited to, revisions of the Juvenile Code and/or the Criminal Procedure Act that would provide appropriate sanctions, services, and treatment for such offenders. In conducting the study, the Commission may review the laws concerning juveniles and youthful offenders from the federal government, other states, and the relevant North Carolina laws and programs. The Commission shall consult with the Department of Correction, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction in conducting the study.

SECTION 34.2. The Commission shall submit a final report, along with any recommended legislation, by March 1, 2007, to the 2007 General Assembly.

PART XXXV. ADMINISTRATIVE OFFICE OF THE COURTS STUDY SELF-SERVE CENTERS (Rand)

SECTION 35. The Administrative Office of the Courts, in consultation with the North Carolina Bar Association, the North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., the North Carolina Justice Center, and Pisgah Legal Services shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation. The Administrative Office of the Courts shall report the results of this study to the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than December 31, 2007.

PART XXXVI. STUDY OF RATE-SETTING METHODOLOGY FOR STATE-FUNDED KIDNEY DIALYSIS (H.B. 1725 – Earle)

SECTION 36. The Department of Health and Human Services may study its rate setting methodology for State-funded kidney dialysis services to determine the feasibility of inflationary increases that correspond to rate and inflationary increases provided for equivalent Medicaid services. If the study is conducted, the Department shall report its findings to the House of Representatives Appropriations Committee and the Senate Appropriations Committee by May 1, 2007.

PART XXXVII. MENHADEN STUDY (H.B. 955 – Stiller)

SECTION 37. The Joint Legislative Commission on Seafood and Aquaculture may study the management of menhaden and Atlantic thread herring, including whether it should be unlawful to take menhaden or Atlantic thread herring with a purse seine off the shore of Brunswick and New Hanover Counties during all or part of each year. If the study is conducted, the Commission shall report its findings

and recommendations, including any legislative proposals, to the 2007 General Assembly.

PART XXXVIII. CONTINUE TWENTY-FIRST CENTURY REVENUE SYSTEM STUDY COMMISSION (Daughtridge, McGee)

SECTION 38. Section 46.7 of S.L. 2004-161 reads as rewritten:

"**SECTION 46.7.** Report. – The Commission may make an interim report to the 2005 2006 Regular Session of the 2005 General Assembly not later than its convening, and must make its final report to the ~~2006 Regular Session of the 2005-2007~~ General Assembly upon its convening. The Commission shall terminate the earlier of the filing of its final report or upon the convening of the ~~2006 Regular Session of the 2005 2007~~ General Assembly."

PART XXXIX. STUDY COMMISSION ON THE ORGANIZATION, POWERS, DUTIES, FUNCTIONS, FUNDING, AND POTENTIAL CONSOLIDATION OR ELIMINATION OF STATE BOARDS, COMMISSIONS, AND COUNCILS (Harrell)

SECTION 39.1. There is created the Study Commission on State Boards, Commissions, and Councils. The Commission shall consist of 28 members as follows:

- (1) 14 members appointed by the President Pro Tempore of the Senate.
- (2) 14 members appointed by the Speaker of the House of Representatives.

SECTION 39.2. The President Pro Tempore of the Senate shall appoint two cochairs of the Commission and the Speaker of the House of Representatives shall appoint two cochairs of 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 39.3. The Commission shall examine the organization, powers, duties, functions, and funding of State boards, commissions, and councils. The Commission shall specifically consider the following:

- (1) Whether the boards, commissions, or councils should be eliminated or consolidated with one or more other boards, commissions, or councils.
- (2) Whether the number of members serving on boards, commissions, and councils or the manner in which members are selected should be altered.
- (3) Whether the number and frequency of meetings of boards, commissions, and councils should be altered.
- (4) The cost of supporting each board, commission, or council, including salaries, per diem, travel, clerical and administrative support, and other expenses.
- (5) The productivity and effectiveness of the boards, commissions, and councils.

SECTION 39.4. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 39.5. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 39.6. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 39.7. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XL. STUDY COMMISSION ON WORKER RETRAINING (Harrell)

SECTION 40.1. There is created the Study Commission on Worker Retraining. The Commission shall consist of 32 members as follows:

- (1) 16 members appointed by the President Pro Tempore of the Senate.
- (2) 16 members appointed by the Speaker of the House of Representatives.

SECTION 40.2. At least half of the members appointed to the Commission by the President Pro Tempore of the Senate and at least half of the members appointed to the Commission by the Speaker of the House of Representatives shall be persons who are not members of the General Assembly and who are actively engaged in worker retraining or welfare reform as either private citizens, administrators of State agencies, or administrators or faculty at community colleges in the State.

SECTION 40.3. The President Pro Tempore of the Senate shall appoint two cochair of the Commission and the Speaker of the House of Representatives shall appoint two cochair of the Commission. The Commission may meet at any time upon the joint call of the cochair. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 40.4. The Commission shall examine:

- (1) Business incentives that encourage employers to support efforts by employees to retrain in order to qualify for higher paying or nonexportable jobs by allowing employees time off, reimbursing employees for education expenses, or providing other support.
- (2) Successful retraining incentive programs in this and other states.

SECTION 40.5. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 40.6. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House

of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 40.7. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 40.8. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XLI. LOCAL SCHOOL CONSTRUCTION FINANCING STUDY (Yongue)

SECTION 41.1. Section 7.32.(b) of S.L. 2004-124 reads as rewritten:

"**SECTION 7.32.(b)** Membership. – The Commission shall be composed of 2019 members, as follows:

- (1) ~~One member appointed by the Governor, after consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, who shall serve as chair;~~
- (2) Eight members appointed by the President Pro Tempore of the Senate: two members of the Senate from urban areas, two members of the Senate from rural areas, one member representing a large, fast-growing, urban school administrative unit that is a plaintiff in the Leandro school-financing litigation, one member from the financial services industry, one county commissioner, and one educator;
- (3) Eight members appointed by the Speaker of the House of Representatives: two members of the House of Representatives from urban areas, two members of the House of Representatives from rural areas, one member representing a rural school administrative unit that is a plaintiff in the Leandro school-financing litigation, one member who is knowledgeable about municipal and school finance, one school board member, and one educator;
- (4) The State Treasurer or a designee;
- (5) The State Superintendent of Public Instruction or a designee; and
- (6) The chair of the State Board of Education.

Vacancies shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission."

SECTION 41.2. Section 7.32.(i) of S.L. 2004-124 reads as rewritten:

"**SECTION 7.32.(i)** Reports. – The Commission shall make ~~an interim report to the 2005 General Assembly no later than January 31, 2005, and a final report to the 2006 2007 Regular Session of the 2005 General Assembly no later than March 31, 2006.~~ Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. ~~The interim report may also contain recommendations for legislation. The Commission shall terminate on March 31, 2006 upon the filing of its final report.~~"

PART XLII. LEGISLATIVE STUDY COMMISSION ON STATE PERSONNEL STATUTES

SECTION 42. Section 5.1 of S.L. 2004-161 reads as rewritten:

"**SECTION 5.1.** The General Assembly may study issues related to the State Personnel Act. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall designate an appropriate committee to conduct the study. The Committee may make an interim report to the ~~2005-2006~~ General Assembly and shall make its final report to the ~~2006 Regular Session of the 2005-2007~~ General Assembly."

PART XLIII. DIVISION OF AIR QUALITY STUDY OF COSTS AND BENEFITS OF REDUCING EMISSIONS OF OXIDES OF NITROGEN, PARTICULATE MATTER, AND GREENHOUSE GASES FROM MOTOR VEHICLES. (S.B. 1006 – Clodfelter)

SECTION 43. The Division of Air Quality of the Department of Environment and Natural Resources shall study the costs and benefits of reducing emissions of oxides of nitrogen, particulate matter, and greenhouse gases from motor vehicles in this State. In particular, the Division shall evaluate the desirability and air quality benefits of adopting motor vehicle emissions standards adopted in other states. The Division of Air Quality shall submit an interim report on its findings and recommendations, including any legislative proposals, no later than January 15, 2007 and shall submit a final report no later than April 1, 2007 to the Environmental Review Commission and the Legislative Commission on Global Climate Change.

PART XLIV. DEPARTMENT OF HEALTH AND HUMAN SERVICES SURVEY OF PHARMACY PROVIDERS PARTICIPATING IN THE MEDICAID PROGRAM TO DETERMINE THE COST OF DISPENSING A MEDICAID PRESCRIPTION (H.B. 2853 – England; Faison)

SECTION 44. Not later than January 1, 2007, the Department of Health and Human Services shall conduct a survey of pharmacy providers participating in the Medicaid program to determine the cost of dispensing a Medicaid prescription in North Carolina. In place of the survey, the Department of Health and Human Services may use a recently conducted national survey of a statistically relevant sample of pharmacies. The Department shall report its findings to the Senate Appropriations subcommittee 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.

PART XLV. WATERFRONT ACCESS STUDY COMMITTEE (H.B. 1922 – Wainwright, Justice; S.B. 1352 – Albertson)

SECTION 45.1. There is created the Waterfront Access Study Committee.

SECTION 45.2. The Committee shall be comprised of 21 members as follows:

- (1) The Director of the Sea Grant College Program of The University of North Carolina or the Director's designee.

- (2) The Senate Cochair of the Joint Legislative Commission on Seafood and Aquaculture or the Cochair's designee.
- (3) The House Cochair of the Joint Legislative Commission on Seafood and Aquaculture or the Cochair's designee.
- (4) The Chair of the Marine Fisheries Commission or the Chair's designee.
- (5) The Chair of the Coastal Resources Commission or the Chair's designee.
- (6) The Chair of the Wildlife Resources Commission or the Chair's designee.
- (7) The Director of the Division of Marine Fisheries or the Director's designee.
- (8) The Director of the Division of Coastal Management or the Director's designee.
- (9) The President of the North Carolina Recreation and Parks Association or the President's designee. The individual who serves in this position must also be a director of a public parks and recreation agency located in a coastal region as described in G.S. 143B-289.54(b).
- (10) A representative of a local government located in the Northeast Coastal Region, as described by G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.
- (11) A representative of a local government located in the Central Coastal Region, as described by G.S. 143B-289.54(b), appointed by the Speaker of the House of Representatives.
- (12) A representative of a local government located in the Southeast Coastal Region, as described by G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.
- (13) An economist appointed by the Speaker of the House of Representatives.
- (14) A representative of the residential building industry who builds in a coastal region as described in G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.
- (15) A realtor licensed under Chapter 93A of the General Statutes, appointed by the Speaker of the House of Representatives.
- (16) An individual involved in economic development in a coastal region as described in G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.
- (17) A representative of the marine trades industry appointed by the Speaker of the House of Representatives.
- (18) A representative of the commercial fishing industry appointed by the President Pro Tempore of the Senate.
- (19) A representative of the recreational fishing industry appointed by the Speaker of the House of Representatives.
- (20) A social scientist appointed by the President Pro Tempore of the Senate.
- (21) A representative of the environmental community appointed by the Speaker of the House of Representatives.

The Director of the Sea Grant College Program of The University of North Carolina or the Director's designee shall be the Chair of the Committee. Any vacancy

shall be filled by the original appointing authority. A quorum of the Committee shall be a majority of its members. The Committee shall meet upon the call of the Chair.

SECTION 45.3. The Committee, with the assistance of the Sea Grant College Program of The University of North Carolina and the North Carolina Coastal Resources Law, Planning, and Policy Center, shall study the degree of loss and potential loss of the diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the public trust waters of the State. Specifically, the Committee shall:

- (1) Gather information about local land-use management and zoning, current shoreline development trends, and local tax rates, including tax assessment trends for shoreline properties.
- (2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive-based techniques and management tools used to preserve waterfront diversity.
- (3) Assess the applicability of such tools and techniques to the coastal shorelines of North Carolina.
- (4) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address issues of diversity of waterfront use and access in North Carolina.
- (5) Hold three public meetings to present the draft report and recommendations to the public and user groups. One public meeting shall be held in each of the three coastal regions described by G.S. 143B-289.54(b).

SECTION 45.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 45.5. The Committee may submit an interim report of its study to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission, and the Coastal Resources Commission no later than January 15, 2007. The Committee shall submit a final report of the results of its study, including any legislative recommendations, to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission, and the Coastal Resources Commission no later than April 15, 2007. The Committee shall terminate on April 15, 2007, or upon the filing of its final report, whichever occurs first.

SECTION 45.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

PART XLVI. GOVERNMENT PERFORMANCE AUDIT

SECTION 46.1. The Government Performance Audit Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of 10 members appointed as follows: (i) five members of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and (ii) five members of the Senate shall be appointed by the President Pro Tempore of the Senate.

Terms on the Committee begin on August 1, 2006. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the meetings of the Committee. Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

SECTION 46.2. The Committee shall contract for a performance audit of the executive branch of State government. The goals of the audit are to evaluate the efficiency and effectiveness of State government and to identify specific ways to make improvements. The audit may examine entire departments, agencies, or institutions, or similar programs in several departments. The results of the audit shall be reported on or before February 1, 2008.

The performance audit shall include an examination of the efficiency and effectiveness of major management policies, practices, and functions, including the following areas:

- (1) Planning, budgeting, and program evaluation policies and practices, including an analysis of the compliance of the executive branch with existing planning requirements, such as the Capital Improvement Planning Act, Article 1B of Chapter 143 of the General Statutes.
- (2) Personnel systems operations and management.
- (3) State purchasing operations and management.
- (4) Information technology and telecommunications systems policy, organization, and management.
- (5) Review of duplications and related or overlapping services or activities for the purpose of coordinating and streamlining programs to achieve consistent and clear objectives.

SECTION 46.3. The Committee shall issue a Request for Proposal (RFP) for a government performance audit to be conducted in accordance with this act. The Committee may award a contract pursuant to the RFP.

PART XLVII. STATE AND LOCAL FISCAL MODERNIZATION STUDY COMMISSION.

SECTION 47.1. Establishment of the Commission. – The State and Local Fiscal Modernization Study Commission is established.

SECTION 47.2. Membership. – The Commission shall be composed of 30 members, as follows:

- (1) Ten members appointed by the Governor as follows:
 - a. Four persons with substantial business experience.
 - b. Two persons who hold county or municipal elected office or are county or city managers.
 - c. One person with experience in economic analysis.
 - d. Three members of the public at large.
- (2) Ten members appointed by the Speaker of the House of Representatives as follows:
 - a. Three persons with substantial business experience.
 - b. Four persons who are members of the House of Representatives at the time of appointment.
 - c. One person who hold county or municipal elected office or are county or city managers.
 - d. One person with experience in economic analysis.
 - e. One member of the public at large.
- (3) Ten members appointed by the President Pro Tempore of the Senate as follows:
 - a. Three persons with substantial business experience.
 - b. Four persons who are members of the Senate at the time of appointment.
 - c. One persons who hold county or municipal elected office or are county or city managers.
 - d. One person with experience in economic analysis.
 - e. One members of the public at large.

The Commission shall have three cochairs, one designated by the Governor, one designated by the President Pro Tempore and one designated by the Speaker of the House of Representatives from among their appointees. The Commission shall meet upon the call of the cochairs. Vacancies shall be filled by the appointing authority.

SECTION 47.3. Duties of the Commission. – The Commission shall:

- (1) Examine State and local revenue-sharing and taxing authority, and the division of responsibility for providing for infrastructure, public education, Medicaid and other needs.
- (2) Examine North Carolina's revenue- and responsibility- sharing between State and local governments compared to those in other states.
- (3) Review the existing State tax code and recommend ways to modernize it.
- (4) Examine the current authority of local government to levy taxes and fees and recommend any changes in such authority.

- (5) Examine local governments' ability to pay for services required by their citizens.
- (6) Recommend to the Governor and the General Assembly needed changes in State and local tax structure and sharing of revenues and responsibilities.
- (7) Study and recommend a permanent financing strategy leading to the elimination of county financial participation in Medicaid services.

SECTION 47.4. Members of the Commission shall receive subsistence and travel allowances at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. The University of North Carolina shall provide advice and staffing to the Commission. Provision of such advice and staffing shall be coordinated through the President of The University of North Carolina, utilizing appropriate resources of the various constituent institutions. With the prior approval of the Legislative Services Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building. The Commission may also meet at various locations around the State in order to promote greater public participation in its deliberations. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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. The Commission may meet during a regular or extra session of the General Assembly.

SECTION 47.5. The Commission shall report its finding and recommendation to the 2007 Regular Session of the General Assembly no later than May 1, 2007. The Commission shall terminate upon the filing of its final report

SECTION 47.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part. Such allocation may be accomplished by transfer of funds to the University of North Carolina. Funds appropriated to The University of North Carolina may also be used to provide professional and clerical assistance as provided by this Part.

PART XLVIII. CHRONIC KIDNEY DISEASE TASK FORCE (Wright)

SECTION 48.1. The North Carolina Institute of Medicine is requested to convene a Task Force to study chronic kidney disease.

SECTION 48.2. If the Task Force is convened, the Secretary of Health and Human Services or a designee shall serve as a Co-Chair of the Task Force. The other Co-Chair shall be selected from the Task Force members. The Task Force shall include, but not be limited, to the following members:

- (1) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Two members of the Senate appointed by the President Pro Tempore of the Senate.
- (3) Three physicians appointed from lists submitted by the North Carolina Medical Society.

- (4) One physician appointed from lists submitted by the Old North State Medical Society.
- (5) One member who represents the State affiliate of the National Kidney Foundation.
- (6) One member who is a representative of the Department of Nephrology at each of the following medical schools: The University of North Carolina at Chapel Hill School of Medicine, Duke University School of Medicine, Bowman Gray School of Medicine at Wake Forest University, and the Brody School of Medicine at East Carolina University.
- (7) One member who represents owners/operators of clinical laboratories in the State.
- (8) One member who represents a private renal care provider
- (9) One member who is a dietitian licensed by the State of North Carolina.
- (10) One member who is a registered nurse practicing in the renal field.
- (11) One member who is a social worker practicing in the renal field.
- (12) One member who has chronic kidney disease.
- (13) Four representatives from the Department of Health and Human Services, including one representative from Community Care of North Carolina, one representative from the Division of Public Health, Chronic Disease Branch, one representative from the Division of Facility Services, Certificate of Need section, and one representative from the Office of Minority Health and Health Disparities.

If the Task Force is convened, the North Carolina Institute of Medicine shall provide staff and arrange for meeting facilities for the Task Force.

SECTION 48.3. If the Task Force is convened, it shall develop a plan to:

- (1) Reduce the occurrence of chronic kidney disease by controlling the most common risk factors, diabetes and hypertension, through preventive efforts at the community level and disease management efforts in the primary care setting.
- (2) Educate the public and health care professionals about the advantages and methods of early screening, diagnosis, and treatment of chronic kidney disease and its complications based on Kidney Disease Outcomes Quality Initiative Clinical Practice Guidelines for chronic kidney disease or other medically recognized clinical practice guidelines.
- (3) Educate health care professionals about early renal replacement therapy education for patients (including in-center dialysis, home hemodialysis, peritoneal dialysis as well as vascular access options and transplantation) prior to the onset of ESRD when kidney function is declining.
- (4) Make recommendations on the implementation of a cost-effective plan for prevention, early screening, diagnosis, and treatment of chronic kidney disease and its complications for the State's population.
- (5) Identify current barriers to adoption of best practices and potential policy options to address these barriers.

SECTION 48.4. If the North Carolina Institute of Medicine Chronic Kidney Disease Task Force is convened, it shall submit its interim report and recommendations to the 2007 General Assembly upon its convening, and to the chairs of the Senate

Health Committee, the House of Representatives Health Committee, the House Aging Committee, and the Governor. The final report shall be submitted no later than the convening of the 2008 General Assembly. Upon submission of this report, the Task Force shall terminate.

PART XLIX. RAIL SERVICES COMMISSION (H.B. 89 – Pate, Rapp; S.B. 674 – Nesbitt)

SECTION 49.1. Commission Established. – There is established in the General Assembly a Joint Legislative Commission on Expanding Rail Service. The Commission shall be composed of 16 members as follows:

- (1) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

SECTION 49.2. Duties of Commission. – The Commission shall study the following matters related to expanding rail service in North Carolina:

- (1) The cost and benefits of expanding and upgrading rail service in the State, including the effect the expanded service would have on economic development.
- (2) The feasibility, cost, and benefits of establishing commuter rail service in the State to transport workers to cities from outlying areas, including the effect the commuter service would have on increasing the economic opportunities of those who live in the outlying areas.
- (3) The cost and benefits of expanding passenger rail service to the western and eastern areas of the State, including the effect the expanded service would have on tourism.
- (4) Ways to preserve unused or abandoned rail corridors for future rail needs.
- (5) Spurring economic development and tourism through further development of short-line railroads.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall be nine members.

SECTION 49.3. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 49.4. Staff. – Adequate staff shall be provided to the Commission by the Legislative Services Office.

SECTION 49.5. Consultants. – The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 49.6. Cooperation. – The Commission may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 49.7. Meetings During Legislative Session. – The Commission may meet during a regular or extra session of the General Assembly, subject to approval

of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 49.8. Meeting Location. – The Commission shall meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building.

SECTION 49.9. Report. – The Commission shall make a final report of its findings and recommendations to the 2007 General Assembly. Upon the filing of its final report, the Commission shall terminate.

SECTION 49.10. Appropriation. – Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission.

PART L. LEGISLATIVE STUDY COMMISSION ON THE BUDGET OF THE DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 50.1. There is created the Legislative Study Commission on the Budget of the Department of Public Instruction. The purpose of the Commission is to perform a zero-based budget review of the Department of Public Instruction.

SECTION 50.2. The Commission shall consist of five members of the House of Representatives appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 50.3. In performing a zero-based budget review of the Department of Public Instruction, the Commission shall include all of the following:

- (1) Consider the mission and goals of the Department, as set out in statutes and in the rules, policies, and practices of the Department.
- (2) Evaluate the mission and goals of the Department in view of the Leandro decision, the No Child Left Behind Act of 2001, the academic performance of students in the public schools, and the needs of the State and its citizens, and propose any necessary revisions.
- (3) Evaluate the efficiency and effectiveness of the Department of Public Instruction in furthering the missions and goals of the Department, including any proposed revisions. This evaluation shall include (i) the role of the Department of Public Instruction, its administrative structure, organization, and its statutory powers and duties; (ii) the role of the State Board of Education as the head of the Department of Public Instruction, its composition, organization, and constitutional and statutory powers and duties; and (iii) the role of the State Superintendent as secretary and chief administrative officer of the State Board, the State Superintendent's selection, and the State Superintendent's constitutional and statutory powers and duties.
- (4) Evaluate each program within the Department to determine (i) whether and to what extent it is required by State or federal law; (ii) what extent it achieves the mission and goals of the Department; and (iii) whether there are alternative ways to achieve the mission and goals of

the Department, including proposed revisions, in a more efficient and effective manner.

- (5) Assess the activities performed in each program, the major benefits provided by the program, the current cost and staffing levels for the program, the rationale for the cost and staffing levels, and the administrative and other overhead costs of the program.
- (6) Determine the level of funding and staff necessary to accomplish the goals and missions of the Department, including proposed revisions, without regard to past levels of funding.

SECTION 50.4. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

SECTION 50.5. The Commission shall report the results of its study and its recommendations to the 2007 General Assembly upon its convening. The Commission shall terminate upon filing its final report or upon the convening of the 2007 General Assembly, whichever is earlier.

SECTION 50.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART LI. STATE BOARD OF EDUCATION STUDY OF PUBLIC SCHOOL PERSONNEL COMMUNICATION CONCERNING DISABILITIES

SECTION 51. The State Board of Education, in cooperation with Division TEACCH and the North Carolina Justice Academy, shall study training for public school personnel designed to facilitate, when needed, effective communication and transfer of information about students with autism and other disabilities between school personnel and school resource officers. The State Board shall report its findings and recommendations to the 2007 General Assembly on or before March 31, 2007.

PART LII. DOROTHEA DIX HOSPITAL PROPERTY STUDY COMMISSION EXPANDED

SECTION 52. Section 3.4.(b) of S.L. 2003-314 reads as rewritten:

"**SECTION 3.4.(b)** Creation and Membership. – The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of ~~nine~~ 11 members, ~~four~~ five appointed by the President Pro Tempore of the Senate and ~~four~~ five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

PART LIIL. JOINT LEGISLATIVE STUDY COMMITTEE ON SEX OFFENDER REGISTRATION AND INTERNET CRIMES AGAINST CHILDREN

SECTION 53.1. There is established a Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes Against Children.

SECTION 53.2. The Study Committee shall consist of 18 members, nine members appointed by the Speaker of the House of Representatives and nine members appointed by the President Pro Tempore of the Senate.

SECTION 53.3. The Study Committee shall study sex offender registration laws and internet crimes against children. In connection with this study, the Committee shall:

- (1) Review the list of offenses for which registration is required in North Carolina and determine whether offenses should be added or deleted from the registration requirement.
- (2) Consider increasing or decreasing the amount of time a person should remain on the registry.
- (3) Examine the procedures for termination of the registration requirement.
- (4) Consider the ways to improve the verification of the registration requirement.
- (5) Evaluate whether law enforcement should have an affirmative duty to notify residents, schools, or other interested parties that a sex offender lives in the neighborhood.
- (6) Identify methods that can be used to track sex offender locations, including the use of GPS devices to monitor sex offenders, even after they have served their sentences.
- (7) Study the use of registration fees.
- (8) Consider prohibiting sex offenders from working in jobs that involve direct contact with children.
- (9) Evaluate proposals that require sex offenders to stay a certain distance from schools and day care centers.
- (10) Compare sex offender laws in North Carolina with the laws of other states.
- (11) Review the criminal statutes and sentencing guidelines in North Carolina relating to the production, distribution, and possession of child pornography and determine how they can be strengthened and improved.
- (12) Review the criminal statutes and sentencing guidelines in North Carolina relating to enticement of children through the use of computers or the Internet.
- (13) Examine the current prosecution and sentencing of child pornography and other Internet crimes against children.

- (14) Evaluate law enforcement practices, capacity, training, and workload for combating child pornography and other Internet crimes against children.
- (15) Investigate ways to increase the use of asset forfeiture in child pornography distribution and production cases.
- (16) Review best practices federally and in other states regarding Internet crimes against children.

SECTION 53.4. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 53.5. Subject to the approval of the Legislative Services Commission, the Committee may meet in the State Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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. The appointing authority shall fill vacancies.

SECTION 53.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Committee established by this Part.

SECTION 53.7. The Committee shall make a final report to the 2007 General Assembly upon its convening, and shall terminate upon the earlier of the filing of its final report or the convening of the 2007 General Assembly.

PART LVIV. JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE

SECTION 54.1. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 54.2. Expungement for Non-Violent Felons (H.B. 1084 – Bordsen) – The Committee may study issues related to expungement for non-violent felons.

PART LV. BENEFICIAL USES OF INDUSTRIAL HEMP (S.B. 1572 – Bingham and Kinnaird)

SECTION 55.1. There is established a Study Commission on the Beneficial Uses of Industrial Hemp.

SECTION 55.2. The Commission shall be composed of 15 members as follows:

- (1) Two members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) Two members appointed by the Governor.
- (4) The Chair of the Agriculture Committee of the House of Representatives.
- (5) The Chair of the Agriculture, Environment, and Natural Resources Committee of the Senate.
- (6) The Commissioner of Agriculture or the Commissioner's designee.
- (7) The Secretary of Commerce or the Secretary's designee.
- (8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (9) The Dean of the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill or the Dean's designee.
- (10) The Dean of The Fuqua School of Business at Duke University or the Dean's designee.
- (11) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
- (12) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall consist of eight members.

SECTION 55.3. The Commission shall study the many beneficial industrial uses of industrial hemp, including the use of industrial hemp oil as an alternative fuel and the use of industrial hemp fiber in construction and paper products. The Commission shall examine the economic opportunities industrial hemp provides to the State and consider the desirability and feasibility of authorizing industrial hemp cultivation and production as a farm product in North Carolina. In addition, the study shall include the following:

- (1) A review of current scientific and business literature on the many uses of industrial hemp, including the uses of industrial hemp oil as an alternative fuel and motor oil; the uses of omega-3 rich industrial hemp seed and industrial hemp oil in snack foods, body care products, and food supplements; the uses of industrial hemp fibers as raw materials for construction and paper products and for fabric; and the uses of industrial hemp in the manufacture of recyclable car parts.
- (2) A review of scientific literature on the different types of hemp and how industrial hemp differs from hemp that is the illegal substance marijuana.
- (3) A review of current economic literature on the economic benefits of, and the economic markets for, the products made using industrial hemp.
- (4) A review of actions taken by the federal government and actions by other states to produce industrial hemp for industrial uses.

- (5) An evaluation of the economic opportunities for the State that may result from producing industrial hemp as a farm product and manufacturing industrial hemp products.
- (6) Any other issues the Commission deems relevant.

SECTION 55.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 55.5. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly and the Environmental Review Commission by December 1, 2006. The Commission shall terminate upon the filing of its final report.

SECTION 55.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART LVI. STUDY COMMISSION ON DAY CARE AND RELATED PROGRAMS (S.B. 1827 – Jenkins)

SECTION 56.1. There is created the Legislative Study Commission on Day Care and Related Programs.

SECTION 56.2. The Commission shall consist of 12 members appointed as follows:

- (1) Four members of the Senate appointed by the President Pro Tempore of the Senate.
- (2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (3) Two members of the general public appointed by the President Pro Tempore of the Senate.
- (4) Two members of the general public appointed by the Speaker of the House of Representatives.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 56.3. The Commission shall study all of the following:

- (1) Assess the shortfalls and benefits of the various day care and related programs.

- (2) Consider needed adjustments, and possible program consolidations, and the necessary reprioritization of funds to realize the maximum benefit to the State's children and families.
- (3) Consider how day care and related programs affect economic development today and in the future.
- (4) Review any other matter that the Commission finds relevant to its charge.

SECTION 56.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 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.

SECTION 56.5. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly by December 31, 2006. The Commission shall terminate upon the filing of its final report.

SECTION 56.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART LVII. BILL AND RESOLUTION REFERENCES

SECTION 57. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART LVIII. EFFECTIVE DATE AND APPLICABILITY

SECTION 58. Except as otherwise specifically provided, this act is effective when it becomes law. If a study is authorized both in this act and in the Current Operations and Capital Improvements Appropriations Act of 2006, the study shall be implemented in accordance with the Current Operations and Capital Improvements Appropriations Act of 2006 as ratified.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:51 a.m. on the 16th day of August, 2006.

H.B. 1059**Session Law 2006-249**

AN ACT TO MAKE CHANGES TO THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN; TO CLARIFY ENROLLMENT IN THE PPO OPTIONAL PROGRAM ESTABLISHED PURSUANT TO PART 2 OF ARTICLE 3 OF CHAPTER 135 OF THE GENERAL STATUTES; AND TO AUTHORIZE THE EXECUTIVE ADMINISTRATOR AND BOARD OF TRUSTEES OF THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN TO PERMIT A CERTAIN NUMBER OF LOCAL GOVERNMENTS OPTIONAL COVERAGE UNDER THE PLAN.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Cost-Saving Initiatives. – Coverage of Over-the-Counter Medications. – Notwithstanding any other provision of law to the contrary, the Executive Administrator and Board of Trustees may authorize coverage for over-the-counter medications as recommended by the Plan's pharmacy and therapeutics committee. In approving for coverage one or more over-the-counter medications, the Executive Administrator and Board of Trustees shall ensure that each recommended over-the-counter medication has been analyzed to ensure medical effectiveness and Plan member safety. The analysis shall also address the financial impact on the Plan. The Executive Administrator and Board of Trustees may impose a co-payment to be paid by each covered individual for each packaged over-the-counter medication. The Executive Administrator and Board of Trustees may adopt policies establishing limits on the amount of coverage available for over-the-counter medications for each covered individual over a 12-month period. Prior to implementing policy and co-payment changes authorized under this section, the Executive Administrator and Board of Trustees shall submit the proposed policies and co-payments to the Committee on Employee Hospital and Medical Benefits for its review.

SECTION 1.(b) Incentive Programs. – For the purposes of helping Plan members to achieve and maintain a healthy lifestyle without impairing patient care, and to increase cost effectiveness in Plan coverage, the Executive Administrator and Board of Trustees may adopt programs offering incentives to Plan members to encourage changes in member behavior or lifestyle designed to improve member health and promote cost-efficiency in the Plan. Participation in one or more incentive programs is voluntary on the part of the Plan member. Before adopting an incentive program, the Executive Administrator and Board of Trustees shall conduct an impact analysis on the proposed incentive program to determine (i) whether the program is likely to result in significant member satisfaction, (ii) that it will not adversely affect quality of care, and (iii) whether it is likely to result in significant cost savings to the Plan. The impact analysis may be conducted by a committee of the Plan, in conjunction with the Plan's consulting actuary, provided that the Plan's medical director participates in the analysis. An approved incentive plan may provide for a waiver of deductibles, co-payments, and coinsurance required under this Article in order to determine the effectiveness of the incentive program in promoting healthy lifestyles for members and increasing cost-effectiveness to the Plan. The Executive Administrator and Board of Trustees shall, before implementing incentive programs authorized under this section, submit the proposed programs to the Committee on Employee Hospital and Medical Benefits for review.

SECTION 2.(a) Technical Changes. – G.S. 135-40.5(g) reads as rewritten:

"(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 preferred branded prescription, and forty dollars (\$40.00) for each preferred branded prescription with a generic equivalent drug, and fifty dollars (\$50.00) for ~~each~~ each nonpreferred branded or generic ~~prescription not on a formulary used by the Plan.~~ prescription.

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 2.(b) Prior Approval. – G.S. 135-40.6A(b) is amended by adding the following new subdivision to read:

...
 "(b) The Executive Administrator and Board of Trustees may establish procedures to require prior medical approvals for the following services:

...
 (12) Bone Anchored Hearing Aids (BAHA) surgically implanted for the treatment of hearing loss."

SECTION 3. Personnel. – For the purpose of improving efficiency and cost-effectiveness of Plan operations, the Executive Administrator and Board of Trustees of the North Carolina State Health Plan may create eight new full-time positions, five of which shall be subject to the State Personnel Act under G.S. 126-5, and three of which shall be exempt from the State Personnel Act under G.S. 126-5(c). The Executive Administrator and Board of Trustees may use up to five hundred sixty-three thousand one hundred six dollars (\$563,106) of available funds to support these positions.

SECTION 4.(a) Pharmacy Benefit Authorization and Enrollment Clarification. – G.S. 135-39.5B(b) reads as rewritten:

"(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~~. G.S. 135-40.9, except that if a pharmacy benefit is not provided under the optional program, the pharmacy benefit under G.S. 135-40.59(g) shall apply. 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. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefits program authorized under this subsection 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."

SECTION 4.(b) G.S. 135-39.5(12) reads as rewritten:

"(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-50-56. The Comprehensive Major Medical Plan and optional plans and programs adopted pursuant to G.S. 135-39.5B shall comply with G.S. 58-3-225."

SECTION 5. The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan ("Plan") may admit up to four additional local government employers to participate in the Plan upon application in accordance with G.S. 135-40.1(6), as enacted in Section 31.26 of S.L. 2004-424. The Executive Administrator and Board of Trustees shall have discretion in selecting the additional local government employers based on sound criteria developed by the Executive Administrator to evaluate the financial impact on the operations of the Plan. The Executive Administrator shall report the proposed selections and the criteria used in making the selections to the Committee on Employee Hospital and Medical Benefits prior to submitting the selections to the Board of Trustees for its approval. The local government employers selected by the Executive Administrator and the Board of Trustees in accordance with this section shall be in addition to local government employers participating in the Plan on July 1, 2006. In admitting local government employers into the Plan, the Executive Administrator shall ensure compliance with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C.S. §1003(b).

SECTION 6. Effective Date. – Sections 1 through 5 of this act become effective July 1, 2006. Section 1 of this act expires July 1, 2009. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:53 a.m. on the 16th day of August, 2006.

H.B. 1413**Session Law 2006-250**

AN ACT TO PROVIDE ADDITIONAL AUTHORITY FOR LOCAL GOVERNMENTS THAT ADMINISTER APPROVED LOCAL ENVIRONMENTAL PROGRAMS AND TO PROVIDE ADDITIONAL INCENTIVES FOR LOCAL GOVERNMENTS TO REQUEST THE AUTHORITY TO ADMINISTER ALL OR A PORTION OF CERTAIN ENVIRONMENTAL PROGRAMS AND TO ALLOW LOCAL GOVERNMENT EMPLOYEES TO STAND IN, ON, OR NEAR A PUBLIC STREET OR HIGHWAY OWNED, LEASED, OR CONTROLLED BY THE STATE TO SOLICIT CHARITABLE CONTRIBUTIONS SO LONG AS THE PERSON SOLICITING IS AN EMPLOYEE OR AGENT OF THE LOCAL GOVERNMENT AND MEETS CERTAIN RESTRICTIONS AND GUIDELINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection to read:

"(e) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. G.S. 113A-56 reads as rewritten:

"§ 113A-56. Jurisdiction of the Commission.

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (1) Conducted by the ~~State~~; State.
- (2) Conducted by the United ~~States~~; States.
- (3) Conducted by persons having the power of eminent ~~domain~~; domain other than a local government.
- (4) Conducted by ~~local governments~~; or a local government.
- (5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other

land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action."

SECTION 3. G.S. 113A-60 reads as rewritten:

"§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and

regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1."

SECTION 4. G.S. 143-215.3D is amended by adding a new subsection to read:

"(f) Local Government Fee Authority Not Impaired. – This section shall not be construed to limit any authority that a unit of local government may have pursuant to any other provision of law to assess or collect a fee for the review of an application for a permit, the review of a mitigation plan, or the inspection of a site or a facility under any local program that is approved by the Commission under this Article."

SECTION 5. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer ~~Extension~~. Extension and Reclaimed Water Utilization. – Municipalities, counties, local boards or commissions, water and sewer

authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service or a reclaimed water utilization system is already being provided by the municipality to the permit applicant or connection to the municipal sewer system or a reclaimed water utilization system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service or a reclaimed water utilization system is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program ~~that~~ that does all of the following:

- (1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this ~~Part~~ Part.
- (2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and plans upon request by the ~~Commission~~ Commission.
- (3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this ~~State~~ State.
- (4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial ~~process~~ process.
- (5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review ~~program~~ program.
- (6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system~~ system.
- (7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer ~~system; and~~ system or a reclaimed water utilization system.
- (8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

(f1) The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

(f2) Notwithstanding any other provision of ~~this subsection, subsections (f) and (f1) of this section~~, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article."

SECTION 6. G.S. 143-215.6A(j) reads as rewritten:

"(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs ~~by the Commission~~ pursuant to ~~G.S. 143-215.3(a)(14)~~ G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section."

SECTION 7.(a) G.S. 20-175(d) reads as rewritten:

"(d) Local governments may enact ordinances restricting or prohibiting a person from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. This subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering ~~surveys~~ surveys except as provided in subsection (e) of this section."

SECTION 7.(b) G.S. 20-175 is amended by adding a new subsection to read:

"(e) A local government shall have the authority to grant authorization for a person to stand in, on, or near a street or State roadway, within the local government's municipal corporate limits, to solicit a charitable contribution if the requirements of this subsection are met.

A person seeking authorization under this subsection to solicit charitable contributions shall file a written application with the local government. This application shall be filed not later than seven days before the date the solicitation event is to occur. If there are multiple events or one event occurring on more than one day, each event shall be subject to the application and permit requirements of this subsection for each day the event is to be held, to include the application fee.

The application must include:

- (1) The date and time when the solicitation is to occur;
- (2) Each location at which the solicitation is to occur; and
- (3) The number of solicitors to be involved in the solicitation at each location.

This subsection does not prohibit a local government from charging a fee for a permit, but in no case shall the fee be greater than twenty-five dollars (\$25.00) per day per event.

The applicant shall also furnish to the local government advance proof of liability insurance in the amount of at least two million dollars (\$2,000,000) to cover damages that may arise from the solicitation. The insurance coverage must provide coverage for claims against any solicitor and agree to hold the local government harmless.

A local government, by acting under this section, does not waive, or limit, any immunity or create any new liability for the local government. The issuance of an authorization under this section and the conducting of the solicitation authorized are not considered governmental functions of the local government.

In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor."

SECTION 8. Sections 1 through 6 of this act become effective 1 September 2006. Section 7 of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

Became law upon approval of the Governor at 11:58 a.m. on the 16th day of August, 2006.

S.B. 2012

Session Law 2006-251

AN ACT TO ENSURE THAT THE UNEMPLOYMENT TAX CONTRIBUTION RATE OF A BANKRUPT COMPANY WHOSE ASSETS ARE SOLD IN A BANKRUPTCY SALE IS NOT TRANSFERRED TO A COMPANY THAT BUYS THE ASSETS OF THE BANKRUPT COMPANY AND SHARES NO COMMON OWNERSHIP WITH THE BANKRUPT COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

- a. ~~Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject,~~

~~however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.~~

1. Mandatory. ~~On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner succeeds to or acquires all of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, unit, the account of the predecessor shall be transferred as of the date of the acquisition of the business to the successor employer for use in the determination of his the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is determined without regard to the predecessor's rate of contributions.
2. Consent. ~~Whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner succeeds to or acquires a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, that unit, the part of the account of the predecessor which that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his the successor's rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common

ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

- a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:
 1. "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.
 2. A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association,

estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business.

- b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

- c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account."

SECTION 2. This act is effective when it becomes law and applies to acquisitions made on or after August 1, 2003.

In the General Assembly read three times and ratified this the 25th day of July, 2006.

Became law upon approval of the Governor at 11:59 a.m. on the 16th day of August, 2006.

H.B. 2170**Session Law 2006-252**

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3I.

"Tax Credits for Growing Businesses.

"§ 105-129.80. Legislative findings.

The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging, and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static, and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.
- (4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina, and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

- (5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.
- (6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.
- (7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"§ 105-129.81. Definitions.

The following definitions apply in this Article:

- (1) Agrarian growth zone. – Defined in G.S. 143B-437.10.
- (2) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.
- (3) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
- (4) Business property. – Tangible personal property that is used in a business and capitalized under the Code.
- (5) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.
- (6) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).
- (7) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.
- (8) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.
- (9) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.
- (10) Establishment. – Defined in 29 C.F.R. § 1904.46, as it existed on January 1, 2002.
- (11) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (12) Hub. – Defined in G.S. 105-164.3.
- (13) Information technology and services. – An industry in one of the following:
 - a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

- b. Software publishers industry group 5112 as defined by NAICS.
- c. Computer systems design and related services industry group 5415 as defined by NAICS.
- (14) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.
- (15) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.
- (16) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.
- (17) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.
- (18) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.
- (19) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.
- (20) Overdue tax debt. – Defined in G.S. 105-243.1.
- (21) Purchase. – Defined in section 179 of the Code.
- (22) Related member. – Defined in G.S. 105-130.7A.
- (23) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.
- (24) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.
- (25) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.
- (26) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"§ 105-129.82. Sunset; studies.

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

- (1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

- (1) Studying the distribution of tax incentives across new and expanding businesses and industries.
- (2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"§ 105-129.83. Eligibility; forfeiture.

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the establishment's principal product or group of products produced or distributed, or services rendered.

- (1) Aircraft maintenance and repair.
- (2) Air courier services hub.
- (3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
- (4) Customer service call centers.
- (5) Electronic shopping and mail order houses.
- (6) Information technology and services.
- (7) Manufacturing.
- (8) Motorsports facility.
- (9) Motorsports racing team.
- (10) Research and development.
- (11) Warehousing.
- (12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone or an agrarian growth zone but not in a development tier one area satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final

order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.89 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.89(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

- (1) The business closed before it was acquired.
- (2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.
- (3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a

business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

- a. Ownership of more than fifty percent (50%) of the business.
- b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars (\$100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone or agrarian growth zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone or agrarian growth zone designations in effect at that time.

"§ 105-129.84. Tax election; cap; carryforwards; limitations.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

"§ 105-129.85. Fees and reports.

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number and amount of credits generated and taken for each credit allowed in this Article.
- (2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.
- (3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.
- (4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"§ 105-129.86. Substantiation.

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.
- (2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.
- (3) Any other qualifying information related to a specific credit allowed under this Article.

"§ 105-129.87. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone or an agrarian growth zone, the amount of the credit is increased by one thousand dollars (\$1,000) per job. In addition, if a job located in an urban progress zone or an agrarian growth zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars (\$2,000) per job.

<u>Area Development Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>5,000</u>
<u>Tier Three</u>	<u>750</u>

(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>5</u>
<u>Tier Two</u>	<u>10</u>
<u>Tier Three</u>	<u>15</u>

(c) Calculation. – A job is located in a county, an urban progress zone, or an agrarian growth zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires, and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

"§ 105-129.88. Credit for investing in business property.

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.83 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

<u>Area Development Tier</u>	<u>Applicable Percentage</u>
<u>Tier One</u>	<u>7%</u>
<u>Tier Two</u>	<u>5%</u>
<u>Tier Three</u>	<u>3.5%</u>

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the

threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

<u>Area Development Tier</u>	<u>Threshold</u>
<u>Tier One</u>	\$ <u>-0-</u>
<u>Tier Two</u>	<u>1,000,000</u>
<u>Tier Three</u>	<u>2,000,000</u>

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall

be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.83 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

"§ 105-129.89. Credit for investment in real property.

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.83 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.81 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars (\$10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.83.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property

used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.84.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding three new sections to read:

"§ 143B-437.08. Development tier designation.

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.
- (2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.
- (4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

- (1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.
- (4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

- (1) The industrial park is located, at one or more sites, in three or more contiguous counties.
- (2) At least one of the counties in which the industrial park is located is a development tier one area.
- (3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.
- (4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

- (5) The total population of all of the counties in which the industrial park is located is less than 200,000.
- (6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"§ 143B-437.09. Urban progress zone designation.

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

- (1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.
- (2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:
 - a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.
 - b. At least fifty percent (50%) of the area of the portion that is within the primary corporate limits of the municipality is zoned as nonresidential and the census tract or census block group is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.
- (3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent (15%) of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
- (2) A detailed description of the boundaries of the area that would comprise the zone.

- (3) A zoning map for the municipality with the proposed zone clearly delineated upon it.
- (4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.
- (5) Detailed census information on the municipality and the proposed zone.
- (6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.
- (7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

- (1) At least fifty percent (50%) of the parcel is located within the zone.
- (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
- (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

"§ 143B-437.10. Agrarian growth zone designation.

(a) Agrarian Growth Zone Defined. – An agrarian growth zone is an area comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census that meets all conditions in this subsection. A county may have no more than one agrarian growth zone.

- (1) All land within the zone is located in whole within a county that has no municipality with a population in excess of 10,000.
- (2) Every census tract and census block group that composes part of the zone has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
- (3) The area of the zone less the smallest census tract included in the zone does not exceed five percent (5%) of the total area of the county in which the zone is located.

(b) Designation. – Upon application of a county, the Secretary of Commerce shall make a written determination whether an area is an agrarian growth zone that satisfies the conditions and limitations of subsection (a) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

- (1) A map showing the census tracts and block groups that would comprise the zone.
- (2) A detailed description of the boundaries of the area that would comprise the zone.
- (3) A certification regarding the size of the proposed zone.
- (4) Detailed census information on the county and the proposed zone.
- (5) A resolution of the board of county commissioners requesting the designation of the area as an agrarian growth zone.
- (6) Any other material required by the Secretary of Commerce.

(c) Parcel of Property Partially in Agrarian Growth Zone. – For the purposes of this section, a parcel of property that is located partially within an agrarian growth zone is considered entirely within the zone if all of the following conditions are satisfied:

- (1) At least fifty percent (50%) of the parcel is located within the zone.
- (2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.
- (3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.2A. Notwithstanding the provisions of G.S. 143B-437.08, as enacted by Section 1.2 of this act, for the 2007 taxable year, a development tier one area is a county whose annual ranking is one of the 41 highest in the State.

SECTION 1.3. G.S. 105-129.2A reads as rewritten:

"§ 105-129.2A. **Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008~~2007.

(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, 2006, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

- (1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.
- (2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars (\$10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.
- (3) Before January 1, 2006, the taxpayer places at least four million dollars (\$4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(a4) Sunset for Taxpayers That Sign a Letter of Commitment. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that signs a letter of commitment with the Department of Commerce on or before December 31, 2006, stating the taxpayer's intent to create new jobs or make new investments with respect to machinery and equipment, central office or aircraft facility property, or substantial investments in other real property at a specific site in this State, this Article is repealed effective for business activities that occur on or after January 1, 2008. If a taxpayer elects to take any

credit under the provisions of this subsection for activities occurring in the 2007 taxable year, the taxpayer may not take any credit under Article 3I of this Chapter with respect to the same establishment for activities occurring in the 2007 taxable year.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

- (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

- (1) Study of the distribution of tax incentives across new and expanding industries.
- (2) Examination of data on economic recruitment for the period from 1994 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by April 1, 2001."

SECTION 1.4. The Department of Commerce shall, in consultation with the North Carolina Rural Center, Inc. and lower-tiered counties, develop additional strategies to enhance economic growth and development in economically distressed areas. The Department shall report on the results of this study to the Joint Legislation Economic Development Oversight Committee by January 1, 2007. For the purposes of this section, "economically distressed areas" means enterprise tier one areas as defined in G.S. 105-129.3.

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one

subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

- (1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).
- (2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).
- (3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	\$50 million	1%
\$50 million	\$200 million	2%
\$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

- (1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in ~~G.S. 105-129.3~~G.S. 105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. 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 State's fiscal year. Refunds applied for after the due date are barred.
- (2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in ~~G.S. 105-129.3~~G.S. 105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area, as defined in G.S. 143B-437.08.
- (3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in ~~G.S. 105-129.4(a)~~G.S. 105-129.4(a) or G.S. 105-129.83(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in ~~G.S. 105-129.3~~G.S. 105-129.3, or a development tier one area,

as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

- a. It is primarily engaged in one of the industries listed in this subsection.
- b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~ a development tier one area as defined in ~~G.S. 105-129.3~~, G.S. 143B-437.08 the required amount is fifty million dollars (\$50,000,000). For all other facilities, the required amount is one hundred million dollars (\$100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. 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, electrical utility distribution lines or 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, electrical utility lines or 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.
- (1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one

- hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars (\$5,000) per new job created up to a maximum of five hundred thousand dollars (\$500,000) per project.
 - (3) There shall be no local match requirement if the project is located in ~~an enterprise tier one area as defined in G.S. 105-129.3~~ a county that has one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.
 - (4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.
 - (5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.
 - (6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).
- (a1) Definitions. – The following definitions apply in this section:
- (1) ~~Air courier services. – A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service. Defined in G.S. 105-129.81.~~
 - (2) ~~Central administrative office. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~
 - (2a) Company headquarters. – Defined in G.S. 105-129.81.
 - (3) ~~Data processing. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~
 - (4) Economically distressed county. – A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied. ~~designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~
 - (5) Eligible industry. – A central administrative office company headquarters or a person engaged in the business of air courier services, data processing, information technology and services, manufacturing, or warehousing and wholesale trade.
 - (6) Information technology and services. – Defined in G.S. 105-129.81.

- (7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
- (8) Manufacturing. – Defined in ~~the North American Industry Classification System adopted by the United States Office of Budget and Management.~~G.S. 105-129.81.
- (9) Reserved.
- (10) ~~Warehousing and wholesale trade. — Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~Warehousing. – Defined in G.S. 105-129.81.
- (11) Wholesale trade. – Defined in G.S. 105-129.81.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(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,~~the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied 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, electrical utility distribution lines or 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, electrical utility lines or 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.

(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"§ 143B-437.04. Community development block grants.

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

- (1) No local match is required for grants awarded for projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3~~ counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.
- (2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3~~ counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a ~~development~~ urban progress zone under ~~G.S. 105-129.3A~~, 143B-437.09, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a ~~development~~ urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise-Development~~ tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3~~, 143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise-development~~ tier area, the location with the highest ~~enterprise-development~~ tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise-Development~~ Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~ <u>20</u>
Tier Three	~~10~~ <u>20</u>
~~Tier Four~~	~~20~~
Tier Five	~~20~~ "

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

- ...
- (3) The number and ~~enterprise-development~~ tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9.(a) If House Bill 2744, 2005 General Assembly, does not become law, then G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by ~~one-fourth~~ fifteen percent (15%) for any eligible position that is located in a development tier two area and twenty-five percent (25%) for any eligible position that is located in an ~~enterprise-a development tier four or five~~ three area."

SECTION 2.9.(b) If House Bill 2744, 2005 General Assembly, becomes law, then G.S. 143B-437.56(d), as amended by that act, reads as rewritten:

"(d) For any eligible position that is located in ~~an enterprise tier four or five~~ development tier three area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. For any eligible position that is located in a development tier two area, eighty-five percent (85%) of the annual grant approved for disbursement shall be payable to the business, and fifteen percent (15%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the ~~enterprise-development~~ tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

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

- (1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3, 143B-437.08~~ and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

- (2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.
- (3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

- (1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in ~~G.S. 105-129.3, 143B-437.08~~. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in ~~G.S. 105-129.3, 143B-437.08~~.
- (2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.
- (3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.
- (4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a), G.S. 143B-437.08~~, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~development tier one county, as defined in ~~G.S. 105-129.3(a), G.S. 143B-437.08~~, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. G.S. 113A-252 reads as rewritten:

"§ 113A-252. Definitions.

The following definitions apply in this Article:

- (1) Council. – The advisory council for the Clean Water Management Trust Fund.
- (2) Economically distressed local government unit. – An economically distressed county, as defined in ~~G.S. 105-129.3, G.S. 143B-437.01~~, or a local government unit located in that county.

- (3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.
- (4) Land. – Real property and any interest in, easement in, or restriction on real property.
- (4a) Local government unit. – Defined in G.S. 159G-20.
- (4b) Stormwater quality project. – Defined in G.S. 159G-20.
- (5) Trustees. – The trustees of the Clean Water Management Trust Fund.
- (6) Wastewater collection system. – Defined in G.S. 159G-20.
- (7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~ a development tier one area under G.S. ~~105-129.3-143B-437.08.~~"

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~ a development tier one area under G.S. ~~105-129.3-143B-437.08.~~"

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~ a development tier one area under G.S. ~~105-129.3-143B-437.08.~~"

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~ a development tier one area under G.S. ~~105-129.3-143B-437.08.~~"

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A, an urban progress zone under G.S. 143B-437.09,~~ a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A, an urban progress zone under G.S. 143B-437.09,~~ a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~ 105-129.83(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(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:

- ...
- (24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in ~~G.S. 105-129.7(b)~~ G.S. 105-129.7(b) or G.S. 105-129.86(b).
- ...
- (27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.85, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.
- ...
- (36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.82."

SECTION 2.22. G.S. 105-129.70, as enacted by S.L. 2006-40, reads as rewritten:

"§ 105-129.70. Definitions.

The following definitions apply in this Article:

- (1) Certified historic structure. – Defined in section 47 of the Code.
- (2) Certified rehabilitation. – Defined in G.S. 105-129.36.
- (3) Cost certification. – The certification obtained by the State Historic Preservation Officer from the taxpayer of the amount of the qualified rehabilitation expenditures or the rehabilitation expenses incurred with respect to an eligible site.
- (3a) Development tier area. – Defined in G.S. 143B-437.08.
- (4) Eligibility certification. – The certification obtained from the State Historic Preservation Officer that the applicable facility comprises an eligible site and that the rehabilitation is a certified rehabilitation.
- (5) Eligible site. – A site located in this State that satisfies all of the following conditions:
 - a. It was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility.
 - b. It is a certified historic structure or a State-certified historic structure.
 - c. It has been at least eighty percent (80%) vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
 - d. The cost certification documents that the qualified rehabilitation expenditures for a site for which a taxpayer is allowed a credit under section 47 of the Code or the rehabilitation expenses for a site for which the taxpayer is not allowed a credit under section 47 of the Code exceed three million dollars (\$3,000,000) for the site as a whole.
- (6) ~~Enterprise tier area. – Defined in G.S. 105-129.3.~~
- (7) Pass-through entity. – Defined in G.S. 105-228.90.

- (8) Qualified rehabilitation expenditures. – Defined in section 47 of the Code.
- (9) Rehabilitation expenses. – Defined in G.S. 105-129.36.
- (10) State-certified historic structure. – Defined in G.S. 105-129.36.
- (11) State Historic Preservation Officer. – Defined in G.S. 105-129.36."

SECTION 2.23. G.S. 105-129.171(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures with respect to an eligible site is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. The credit may be claimed in the year in which the eligible site is placed into service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is as follows:

- (1) For an eligible site located in ~~an enterprise tier one, two, or three~~ development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures.
- (2) For an eligible site located in ~~an enterprise tier four or five~~ development tier three area, determined as of the date of certification, the amount of the credit is equal to thirty percent (30%) of the qualified rehabilitation expenditures."

SECTION 2.24. G.S. 105-129.72(a), as enacted by S.L. 2006-40, reads as rewritten:

"(a) Credit. – A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses with respect to an eligible site is allowed a credit equal to a percentage of the rehabilitation expenses. The entire credit may not be taken for the taxable year in which the property is placed in service, but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the rehabilitation expenses associated with the phase placed into service during that year. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. For an eligible site located in ~~an enterprise tier one, two, or three~~ development tier one or two area, determined as of the date of certification, the amount of the credit is equal to forty percent (40%) of the rehabilitation expenses. No credit is allowed for a site located in ~~an enterprise tier four or five~~ development tier three area."

SECTION 2.25.(a) If House Bill 2744, 2005 General Assembly, does not become law, then G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

- "(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:
 - a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~ Internet service providers and Web search ~~portals~~ portals industry 51811, as defined by NAICS.

- b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
- c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three or a development tier one or two area pursuant to ~~G.S. 105-129.3~~, G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
- d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2.25.(a1) If House Bill 2744, 2005 General Assembly, does become law, then G.S. 105-164.3(8e), as enacted by S.L. 2006-66 and as amended by that act, reads as rewritten:

"(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

- a. The facility is used primarily or is to be used primarily by a business engaged in "Internet service providers and Web search portals" industry 51811, as defined by NAICS.
- b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
- c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to ~~G.S. 105-129.3~~, G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
- d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2.25.(b) G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is

property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
- c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for ~~the~~ such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 2.25.(c) Section 24.17(c) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.17.(c)** ~~This Subsection (b) of this section becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law.~~"

SECTION 2.26. G.S. 105-164.3(23a), as enacted by S.L. 2006-66, reads as rewritten:

"(23a) NAICS. – ~~The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002. Defined in G.S. 105-129.81.~~"

SECTION 2.27. Section 2.25(c) of this part and the changes made to G.S. 105-164.3(8e)a. by Section 2.25(a) of this part are effective when they become law. Subsection 2.25(b) of this part becomes effective October 1, 2006. The remainder of this part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES

SECTION 3. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of July, 2006.

Became law upon approval of the Governor at 11:56 a.m. on the 17th day of August, 2006.

H.B. 1048**Session Law 2006-253**

AN ACT TO PROVIDE: (1) IMPROVED DETECTION OF IMPAIRED DRIVERS ON THE STATE'S ROADS AND HIGHWAYS; (2) IMPROVED METHODS OF DETERMINING HOW UNDERAGE DRIVERS OBTAIN ALCOHOL; (3) PROCEDURES FOR INVESTIGATING, ARRESTING, CHARGING, AND JUDICIAL PROCESSING OF IMPAIRED DRIVING OFFENSES; (4) RULES FOR THE COURTROOM ADMISSION OF EVIDENCE THAT IS RELEVANT TO IMPAIRED DRIVING OFFENSES; (5) CLARIFICATION ON WHEN A DRIVER IS GUILTY OF DRIVING WHILE IMPAIRED; (6) AGGRAVATED PENALTIES FOR OFFENDERS WHO SERIOUSLY INJURE OR KILL WHEN DRIVING WHILE IMPAIRED; (7) A SYSTEM OF REPORTING BY STATE PROSECUTORS AND THE COURTS ON THE DISPOSITION OF IMPAIRED DRIVING OFFENSES; (8) ELECTRONIC MONITORING AFTER AN IMPAIRED DRIVER HAS BEEN RELEASED FROM CONFINEMENT; (9) FOR THE SEIZURE AND FORFEITURE OF THE VEHICLE WHERE A PERSON IS DRIVING WHILE IMPAIRED WITHOUT A LICENSE OR INSURANCE; (10) OTHER MEASURES DESIGNED TO IMPROVE THE SAFETY OF THE MOTORING PUBLIC OF NORTH CAROLINA; AND TO PROVIDE THAT THE ACT SHALL BE KNOWN AS "THE MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as "THE MOTOR VEHICLE DRIVER PROTECTION ACT OF 2006."

PART I. REGULATING MALT BEVERAGE KEGS

SECTION 2. G.S. 18B-101 is amended by adding a new subdivision to read:
"(7b) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage."

SECTION 3.1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-403.1. Purchase-transportation permit for keg or kegs of malt beverages.

(a) Purchase-Transportation. – A person who is not a permittee may purchase and transport for off-premises consumption a keg or kegs as defined in G.S. 18B-101(7b) after obtaining a purchase-transportation permit. Failure to obtain a purchase-transportation permit according to this section is a violation of G.S. 18B-303(b).

(b) Issuance. – A person holding a permit (permittee) pursuant to G.S. 18B-1001(2) shall issue a purchase-transportation permit for a keg or kegs of malt beverage to a purchaser. A copy of the purchase-transportation permit shall be

maintained by the permittee for 90 days. Upon request by any person, the permittee shall maintain the permit for a requested period in excess of 90 days.

(c) Form. – A purchase-transportation permit shall be issued on a printed form adopted and provided by the Commission. The Commission shall adopt rules specifying the content of the permit form.

(d) Restrictions on Permit. – A purchase may be made only from the store named on the permit. One copy of the permit shall be kept by the purchaser and one by the permittee from whom the purchase is made. The purchaser shall display his copy of the permit to any law enforcement officer upon request.

(e) Violation. – The first violation of this section by a permittee shall result in a warning to the permittee."

SECTION 3.2. G.S. 18B-303(a) reads as rewritten:

"(a) Purchases Allowed. – Without a permit, a person may purchase at one time:

- (1) Not more than 80 liters of malt beverages, other than draft malt beverages in kegs; beverages, except draft malt beverages in kegs for off-premises consumption. For purchase of a keg or kegs of malt beverages for off-premises consumption, the permit required by G.S. 18B-403.1(a) must first be obtained;
- (2) Any amount of draft malt beverages by a permittee in kegs; kegs for on-premise consumption;
- (3) Not more than 50 liters of unfortified wine;
- (4) Not more than eight liters of either fortified wine or spirituous liquor, or eight liters of the two combined."

PART II. MODIFYING THE STATUTES ON CHECKING STATIONS AND ROADBLOCKS

SECTION 4. G.S. 20-16.3A reads as rewritten:

"§ 20-16.3A. ~~Impaired driving checks.~~ **Checking stations and roadblocks.**

(a) A law-enforcement agency may make impaired driving checks of drivers of vehicles on highways and public vehicular areas if conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:

- (1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.
- (2) Designates ~~Designate~~ in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to submit to alcohol screening tests to produce drivers license, registration, or insurance information. The plan
- (2a) Operate under a written policy that provides guidelines for the pattern, which need not be in writing. The policy may be either the agency's own policy, or if the agency does not have a written policy, it may be the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to submit to an alcohol screening test, to produce drivers license, registration, or insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

- (3) ~~Marks the area in which checks are conducted to advise~~ Advise the public that an authorized impaired driving check- checking station is being made operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station.

~~This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States."~~

PART III. PROVIDING FOR IMPLIED-CONSENT PRETRIAL AND COURT PROCEEDINGS

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 2D.

"Implied-Consent Offense Procedures.

"§ 20-38.1. Applicability.

The procedures set forth in this Article shall be followed for the investigation and processing of an implied-consent offense as defined in G.S. 20-16.2. The trial procedures shall apply to any implied-consent offense litigated in the District Court Division.

"§ 20-38.2. Investigation.

A law enforcement officer who is investigating an implied-consent offense or a vehicle crash that occurred in the officer's territorial jurisdiction is authorized to investigate and seek evidence of the driver's impairment anywhere in-state or out-of-state, and to make arrests at any place within the State.

"§ 20-38.3. Police processing duties.

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

- (1) Shall inform the person arrested of the charges or a cause for the arrest.
- (2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.
- (3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.
- (4) May take photographs and fingerprints in accordance with G.S. 15A-502.
- (5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

"§ 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

- (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
- (2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
- (3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.
- (4) The magistrate shall also:
 - a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
 - b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article.

"§ 20-38.5. Facilities.

(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

- (1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.

- (2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.
- (3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section.

"§ 20-38.6. Motions and district court procedure.

(a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

(b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

(c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

(d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

(e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

(f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal.

"§ 20-38.7. Appeal to superior court.

(a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

(b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions and, if the defendant has any pending charges of offenses involving impaired driving, shall delay sentencing in the remanded case until all cases are resolved."

PART IV. ALLOWING THE ADMISSIBILITY OF DRUG RECOGNITION EXPERTS, HGN TESTIMONY, AND OPINION AS TO SPEED BY AN ACCIDENT RECONSTRUCTION EXPERT

SECTION 6. G.S. 8C-1, Rule 702 reads as rewritten:

"Rule 702. Testimony by experts.

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(a1) A witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

- (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
- (2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

...

(i) A witness qualified as an expert in accident reconstruction who has performed a reconstruction of a crash, or has reviewed the report of investigation, with proper foundation may give an opinion as to the speed of a vehicle even if the witness did not observe the vehicle moving."

PART V. ALCOHOL SCREENING DEVICES

SECTION 7. G.S. 20-16.3 reads as rewritten:

"§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by ~~Commission for Health Services;~~ Department of Health and Human Services; use of test results or refusal.

(a) When Alcohol Screening Test May Be Required; Not an Arrest. – A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

- (1) Reasonable grounds to believe that the driver has consumed alcohol and has:
 - a. Committed a moving traffic violation; or
 - b. Been involved in an accident or collision; or

- (2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) ~~Approval of Screening Devices and Manner of Use. – The Commission for Health Services~~Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the ~~Commission~~Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the ~~Commission~~Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) ~~Tests Must Be Made with Approved Devices and in Approved Manner. – No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the Commission for Health Services~~Department and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~Department as to the manner of its use.

(d) ~~Use of Screening Test Results or Refusal by Officer. – The results of an~~fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for ~~believing~~believing:

- (1) ~~that~~That the driver has committed an implied-consent offense under ~~G.S. 20-16.2.~~G.S. 20-16.2; and
- (2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative ~~or low~~ results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. ~~Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding."~~

PART VI. CLARIFICATION OF IMPAIRED DRIVING OFFENSES

SECTION 8. G.S. 20-4.01 reads as rewritten:

"§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

...

- (32) **Public Vehicular Area.** – Any area within the State of North Carolina that meets one or more of the following requirements:
 - a. The area is ~~generally open to and~~ used by the public for vehicular ~~traffic,~~traffic at any time, including by way of illustration and not limitation any drive, driveway, road,

roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space ~~for customers, patrons, or the public. whether the business or establishment is open or closed.~~
3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).
- b. The area is a beach area used by the public for vehicular traffic.
- c. The area is a road ~~opened to used by~~ vehicular traffic within or leading to a ~~subdivision for use by subdivision residents, their guests, and members of the public, subdivision,~~ whether or not the subdivision roads have been offered for dedication to the public.
- d. The area is a portion of private property used ~~for~~ by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

...

- (45) State. – A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, ~~or a province of Canada, a~~ province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina.

..."

SECTION 9. G.S. 20-138.1 reads as rewritten:

"§ 20-138.1. Impaired driving.

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

- (1) While under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or
- (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

(c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge ~~must~~ shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.

(e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse, bicycle, or lawnmower. horse."

SECTION 10. G.S. 20-138.2 reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

- (1) While under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or
- (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

(a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.04 or more.

(a2) In order to prove the gross vehicle weight rating of a vehicle as defined in G.S. 20-4.01(12b), the opinion of a person who observed the vehicle as to the weight, the testimony of the gross vehicle weight rating affixed to the vehicle, the registered or declared weight shown on the Division's records pursuant to G.S. 20-26(b1), the gross vehicle weight rating as determined from the vehicle identification number, the listed gross weight publications from the manufacturer of the vehicle, or any other description or evidence shall be admissible.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).

..."

SECTION 11. G.S. 20-138.3(b2) reads as rewritten:

"§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.

(b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's

refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the ~~Commission for Health Services, Department of Health and Human Services,~~ and the screening test is conducted in accordance with the applicable regulations of the ~~Commission~~Department as to its manner and use."

SECTION 12. G.S. 20-138.5(a) reads as rewritten:

"(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ~~seven~~10 years of the date of this offense."

SECTION 13. G.S. 20-138.5(c) reads as rewritten:

"(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section."

PART VII. FELONY DEATH BY VEHICLE AND INJURY BY VEHICLE

SECTION 14. G.S. 20-141.4 reads as rewritten:

"§ 20-141.4. Felony and misdemeanor death by ~~vehicle~~vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he ~~unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.~~if:

- (1) The person unintentionally causes the death of another person,
- (2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and
- (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he ~~unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.~~if:

- (1) The person unintentionally causes the death of another person,
- (2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and
- (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if:

- (1) The person unintentionally causes serious injury to another person,
- (2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and
- (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:

- (1) The person unintentionally causes serious injury to another person,
- (2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,
- (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and
- (4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a5) Aggravated Felony Death by Vehicle. – A person commits the offense of aggravated felony death by vehicle if:

- (1) The person unintentionally causes the death of another person,
- (2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,
- (3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and
- (4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.

(a6) Repeat Felony Death by Vehicle Offender. – A person who commits an offense under Subsection (a1) or Subsection (a5) of this section, and who has a previous conviction under

- (1) Subsection (a1) of this section; or
- (2) Subsection (a5) of this section; or
- (3) G.S. 14-17 or G.S. 14-18, where the basis of that former conviction, as determined from the face of the indictment, was the unintentional death of another person while engaged in the offense of impaired driving under GS 20-138.1 or GS 20-138.2,

shall be subject to the same sentence as if the person had been convicted of second degree murder.

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

- (1) Aggravated felony death by vehicle is a Class D felony.
- (2) Felony death by vehicle is a Class E felony.
- (3) Aggravated felony serious injury by vehicle is a Class E felony.
- (4) Felony serious injury by vehicle is a Class F felony.
- (5) Misdemeanor death by vehicle is a Class 1 misdemeanor. ~~Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.~~

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

PART VIII. CLARIFYING AND SIMPLIFYING THE IMPLIED-CONSENT LAW

SECTION 15. G.S. 20-16.2 reads as rewritten:**"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for ~~Charging Officer~~ to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. ~~The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer~~ Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent offense, may obtain a chemical analysis of the person.

~~Except as provided in this subsection or subsection (b), before~~ Before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer who is authorized to administer chemical analysis of the breath, who shall inform the person orally and also give the person a notice in writing that:

- (1) ~~The person has a right to refuse to be tested. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.~~
- (2) ~~Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.~~
- (3) ~~The test results, or the fact of the person's your refusal, will be admissible in evidence at trial on the offense charged.~~ trial.
- (4) ~~The person's Your driving privilege will be revoked immediately for at least 30 days if:~~ if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
 - a. ~~The test reveals an alcohol concentration of 0.08 or more;~~
 - b. ~~The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or~~
 - c. ~~The person is under 21 years of age and the test reveals any alcohol concentration.~~
- (5) ~~The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.~~ After you are released, you may seek your own test in addition to this test.
- (6) ~~The person has the right to~~ You may call an attorney for advice and select a witness to view for him or her the testing procedures, procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person you is are notified of his or her of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

~~If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the~~

~~person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.~~

(a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. ~~A "charging officer" is a law enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.~~

(b) Unconscious Person May Be Tested. – If a ~~charging~~ law enforcement officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the ~~charging~~ law enforcement officer may direct the taking of a blood sample ~~by a person qualified under G.S. 20-139.1~~ or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis. – ~~The charging~~ A law enforcement officer, officer or chemical analyst in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must shall designate the type of test or tests to be given and may request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law.

(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical ~~analysis~~ analysis, a person has an alcohol concentration of 0.16 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the ~~charging~~ law enforcement officer and the chemical analyst ~~must shall~~ without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

- (1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;
- (2) ~~The charging officer~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;
- (3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;
- (4) The person was notified of the rights in subsection (a); and
- (5) The results of any tests given or that the person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the ~~charging~~ officer and chemical analyst shall complete the applicable sections of the

affidavit and indicate the restriction which was violated. The ~~charging officer must~~ shall immediately mail the affidavit(s) to the Division. If the ~~charging officer~~ is also the chemical analyst who has notified the person of the rights under subsection (a), the ~~charging officer~~ may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division ~~must~~ shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing ~~must~~ shall be conducted in the county where the charge was brought, and ~~must~~ shall be limited to consideration of whether:

- (1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;
- (2) ~~The charging~~ A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;
- (3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
- (4) The person was notified of the person's rights as required by subsection (a); and
- (5) The person willfully refused to submit to a chemical ~~analysis upon the request of the charging officer.~~ analysis.

If the Division finds that the conditions specified in this subsection are met, it ~~must~~ shall order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it ~~must~~ shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it ~~must~~ shall order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person ~~must~~ shall surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under

G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for ~~such a~~ the hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing ~~de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made on the record. The superior court review shall be limited to whether there is sufficient evidence in the record to support the Commissioner's findings of fact and whether the conclusions of law are supported by the findings of fact and whether the Commissioner committed an error of law in revoking the license.~~

(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

- (1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;
- (2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;
- (3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
- (4) The implied consent offense charged did not involve death or critical injury to another person;
- (5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
 - a. Other than by conviction; or
 - b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;
- (6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;
- (7) The person's license has been revoked for at least six months for the refusal; and
- (8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. – When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division ~~must~~shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law enforcement officer who is investigating whether the person may have committed an implied consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

- (1) That the test results will be admissible in evidence and may be used against ~~the person~~you in any implied consent offense that may arise;
- (2) ~~That the person's license will be revoked for at least 30 days if:~~
 - a. ~~The test reveals an alcohol concentration of 0.08 or more; or~~
 - b. ~~The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more; or~~
 - c. ~~The person is under 21 years of age and the test reveals any alcohol concentration.~~

Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

- (3) That if ~~the person fails~~you fail to comply fully with the test procedures, the officer may charge ~~the person~~you with any offense for which the officer has probable cause, and if ~~the person is~~you are charged with an implied consent offense, ~~the person's~~your refusal to submit to the testing required as a result of that charge would result in revocation of ~~the person's driver's license~~your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

PART IX. ADMISSIBILITY OF CHEMICAL ANALYSES**SECTION 16.** G.S. 20-139.1 reads as rewritten:**"§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.**

(a) **Chemical Analysis Admissible.** – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a person's alcohol concentration or results of other tests showing the presence of an impairing substance, including other chemical tests.

(b) **Approval of Valid Test Methods; Licensing Chemical Analysts.** – ~~A~~The results of a chemical analysis, to be valid, shall be analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A chemical analysis of the breath administered pursuant to the implied-consent law is admissible in any court or administrative hearing or proceeding if it meets both of the following requirements:

- (1) It is performed in accordance with the provisions of this section. The chemical analysis shall be performed according to methods approved by the Commission for Health Services by an individual possessing rules of the Department of Health and Human Services.
- (2) The person performing the analysis had, at the time of the analysis, a current permit issued by the Department of Health and Human Services authorizing the person to perform a test of the breath using the type of instrument employed. for that type of chemical analysis.

For purposes of establishing compliance with subdivision (b)(1) of this section, the court or administrative agency shall take notice of the rules of the Department of Health and Human Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court or administrative agency shall take judicial notice of the list of permits issued to the person performing the analysis, the type of instrument on which the person is authorized to perform tests of the breath, and the date the permit was issued. The Commission for Health Services may adopt rules approving satisfactory methods or techniques for performing chemical analyses, and the Department of Health and Human Services may ascertain the qualifications and competence of individuals to conduct particular chemical analyses. analyses and the methods for conducting chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) **When Officer May Perform Chemical Analysis.** – ~~Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:~~

- (1) ~~The officer possesses a current permit issued by the Department of Health and Human Services for the type of chemical analysis.~~
- (2) ~~The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.~~

Any person possessing a current permit authorizing the person to perform chemical analysis may perform a chemical analysis.

(b2) **Breath Analysis Results Inadmissible if Preventive Maintenance Not Performed.** ~~Maintenance.~~ – The Department of Health and Human Services shall

perform preventive maintenance on breath-testing instruments used for chemical analysis. A court or administrative agency shall take judicial notice of the preventive maintenance records of the Department. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

- (1) The defendant objects to the introduction into evidence of the results of the chemical analysis of the defendant's breath; and
- (2) The defendant demonstrates that, with respect to the instrument used to analyze the defendant's breath, preventive maintenance procedures required by the regulations of the ~~Commission for Health Services~~ Department of Health and Human Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. – ~~By January 1, 1985, the regulations of the Commission for Health Services. The methods governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. The results of the chemical analysis of all breath samples are admissible if the test results from any two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02. Only the lower of the two test results of the consecutively administered tests can be used to prove a particular alcohol concentration. Those regulations must provide:~~

- (1) ~~A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.~~
- (2) ~~That the test results may only be used to prove a person's particular alcohol concentration if:~~
 - a. ~~The pair of readings employed are from consecutively administered tests; and~~
 - b. ~~The readings do not differ from each other by an alcohol concentration greater than 0.02.~~
- (3) ~~That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.~~

A person's refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal under G.S. 20-16.2(c).

A person's refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

~~(b4) Introducing Routine Records Kept as Part of Breath Testing Program. — In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a~~

~~chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.~~

(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of ~~the charging a law enforcement~~ officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2.

(b6) The Department of Health and Human Services shall post on a Web page and file with the clerk of superior court in each county a list of all persons who have a permit authorizing them to perform chemical analyses, the types of analyses that they can perform, the instruments that each person is authorized to operate, the effective dates of the permits, and the records of preventive maintenance. A court shall take judicial notice of whether, at the time of the chemical analysis, the chemical analyst possessed a permit authorizing the chemical analyst to perform the chemical analysis administered and whether preventive maintenance had been performed on the breath-testing instrument in accordance with the Department's rules.

(c) ~~Withdrawal of Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law, When when a blood or urine test is specified as the type of chemical analysis by the charging a law enforcement officer, only a physician, registered nurse, emergency medical technician, or other qualified person may shall~~ withdraw the blood sample. sample and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging law enforcement officer's request for the withdrawal of blood, blood or collecting the urine, the officer shall furnish it before blood is withdrawn. withdrawn or urine collected. When blood is withdrawn or urine collected pursuant to a charging law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

~~The chemical analyst who analyzes the blood shall complete an affidavit stating the results of the analysis on a form developed by the Department of Health and Human Services and provide the affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.~~

~~Evidence regarding the qualifications of the person who withdrew the blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications.~~

(c1) Admissibility. – The results of a chemical analysis of blood or urine by the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in any court, without further authentication. The results shall be certified by the person who performed the analysis, and reported on a form approved by the Attorney General. However, if the defendant notifies the State, at least

five days before trial in the superior court division or an adjudicatory hearing in juvenile court that the defendant objects to the introduction of the report into evidence, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be performed in accordance with rules or procedures adopted by the State Bureau of Investigation, or by another laboratory certified by the American Society of Crime Laboratory Directors (ASCLD), for the submission, identification, analysis, and storage of forensic analyses.

(c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary Witnesses. –

- (1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.
- (3) The provisions of this subsection may be utilized in any administrative hearing and by the State in district court, but can only be utilized in a case originally tried in superior court or an adjudicatory hearing in juvenile court if the defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.
- (4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(c4) The results of a blood or urine test are admissible to prove a person's alcohol concentration or the presence of controlled substances or metabolites or any other impairing substance if:

- (1) A law enforcement officer or chemical analyst requested a blood and/or urine sample from the person charged; and
- (2) A chemical analysis of the person's blood was performed by a chemical analyst possessing a permit issued by the Department of Health and Human Services authorizing the chemical analyst to

analyze blood or urine for alcohol or controlled substances, metabolites of a controlled substance, or any other impairing substance.

For purposes of establishing compliance with subdivision (2) of this subsection, the court or administrative agency shall take judicial notice of the list of persons possessing permits, the type of instrument on which each person is authorized to perform tests of the blood and/or urine, and the date the permit was issued and the date it expires.

(d) Right to Additional Test. – A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis shall assist the person in contacting someone to administer the additional testing or to withdraw blood, and shall allow access to the person for that purpose. Nothing in this section shall be construed to prohibit a person from obtaining or attempting to obtain an additional chemical analysis. If the person is not released from custody after the initial appearance, the agency having custody of the person shall make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone to arrange for any additional test and allow access to the person in accordance with the agreed procedure in G.S. 20-38.4. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(d1) Right to Require Additional Tests. – If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the person's blood or urine.

(d2) Notwithstanding any other provision of law, when a blood or urine sample is requested under subsection (d1) of this section by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood and obtain the urine sample, and no further authorization or approval is required. If the person withdrawing the blood or collecting the urine requests written confirmation of the charging officer's request for the withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or urine obtained.

(d3) When blood is withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing that person, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions. The results of the analysis of blood or urine under this subsection shall be admissible if performed by the State Bureau of Investigation Laboratory or any other hospital or qualified laboratory.

(e) Recording Results of Chemical Analysis of Breath. – The chemical analyst who administers a test of a person's breath shall record the following information after making any chemical analysis:

- (1) The alcohol concentration or concentrations revealed by the chemical analysis.

- (2) ~~The time of the collection of the breath sample or samples used in the chemical analysis.~~

~~A copy of the record of this information shall be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used. A person charged with an implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis results the State intends to offer into evidence may request in writing a copy of the results. The failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.~~

(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

- (1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.
- (2) The time of the collection of the blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.
- (3) The type of chemical analysis administered and the procedures followed.
- (4) The type and status of any permit issued by the Department of Health and Human Services that the analyst held on the date the analyst performed the chemical analysis in question.
- (5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Health and Human Services shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, the person may subpoena the chemical analyst and examine him as if he were an adverse witness. A subpoena for a chemical analyst shall not be issued unless the person files in writing with the court and serves a copy on the district attorney at least five days prior to trial an affidavit specifying the factual grounds on which the person believes the chemical analysis was not properly administered and the facts that the chemical analyst will testify about and stating that the presence of the analyst is necessary for the proper defense of the case. The district court shall determine if there are grounds to believe that the presence of the analyst requested is necessary for the proper defense. If so, the case shall be continued until the analyst can be present. The criminal case shall not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear after being ordered to appear by the court.

(f) Evidence of Refusal Admissible. – If any person charged with an implied-consent offense refuses to submit to a chemical ~~analysis, analysis or to perform~~ field sobriety tests at the request of an officer, evidence of that refusal is admissible in

any ~~criminal~~ criminal, civil, or administrative action against him for an implied consent offense under G.S. 20-16.2, the person.

(g) Controlled-Drinking Programs. – The Department of Health and Human Services may adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

PART X. IMPROVED ACCESS TO MEDICAL RECORDS IN IMPAIRED DRIVING CASES

SECTION 17. Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-21.20B. Access to medical information for law enforcement purposes.

(a) Notwithstanding any other provision of law, if a person is involved in a vehicle crash:

- (1) Any health care provider who is providing medical treatment to the person shall, upon request, disclose to any law enforcement officer investigating the crash the following information about the person: name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.
- (2) Law enforcement officers shall be provided access to visit and interview the person upon request, except when the health care provider requests temporary privacy for medical reasons.
- (3) A health care provider shall disclose a certified copy of all identifiable health information related to that person as specified in a search warrant or an order issued by a judicial official.

(b) A prosecutor or law enforcement officer receiving identifiable health information under this section shall not disclose this information to others except as necessary to the investigation or otherwise allowed by law.

(c) A certified copy of identifiable health information, if relevant, shall be admissible in any hearing or trial without further authentication.

(d) As used in this section, "health care provider" has the same meaning as in G.S. 90-21.11."

SECTION 18. G.S. 8-53.1 reads as rewritten:

"§ 8-53.1. Physician-patient and nurse privilege waived in child abuse; disclosure of information in impaired driving accident cases.

(a) Notwithstanding the provisions of G.S. 8-53 and G.S. 8-53.13, the physician-patient or nurse privilege shall not be a ground for excluding evidence

regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina.

(b) Nothing in this Article shall preclude a health care provider, as defined in G.S. 90-21.11, from disclosing information to a law enforcement agency investigating a vehicle crash under the provisions of G.S. 90-21.20B."

PART XI. PROSECUTOR REPORTING WHEN IMPLIED-CONSENT CASE IS DISMISSED

SECTION 19. G.S. 20-138.4 reads as rewritten:

"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving.

(a) Any prosecutor ~~must~~ shall enter detailed facts in the record of any case involving impaired driving subject to the implied-consent law or involving driving while license revoked for impaired driving as defined in G.S. 20-28.2 explaining orally in open court and in writing the reasons for his action if he:

- (1) Enters a voluntary dismissal; or
- (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- (3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or
- (4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as "interests of justice" or "insufficient evidence" are not sufficiently detailed to meet the requirements of this section.

(b) The written explanation shall be signed by the prosecutor taking the action on a form approved by the Administrative Office of the Courts and shall contain, at a minimum:

- (1) The alcohol concentration or the fact that the driver refused.
- (2) A list of all prior convictions of implied-consent offenses or driving while license revoked.
- (3) Whether the driver had a valid drivers license or privilege to drive in this State as indicated by the Division's records.
- (4) A statement that a check of the database of the Administrative Office of the Courts revealed whether any other charges against the defendant were pending.
- (5) The elements that the prosecutor believes in good faith can be proved, and a list of those elements that the prosecutor cannot prove and why.
- (6) The name and agency of the charging officer and whether the officer is available.
- (7) Any reason why the charges are dismissed.

(c) A copy of the form required in subsection (b) of this section shall be sent to the head of the law enforcement agency that employed the charging officer, to the district attorney who employs the prosecutor, and filed in the court file. The Administrative Office of the Courts shall electronically record this data in its database and make it available upon request."

SECTION 20.1. G.S. 7A-109.2 reads as rewritten:

"§ 7A-109.2. Records of dispositions in criminal cases; impaired driving integrated data system.

(a) Each clerk of superior court shall ensure that all records of dispositions in criminal cases, including those records filed electronically, contain all the essential information about the case, including the ~~identity~~ the name of the presiding judge and the attorneys representing the State and the defendant.

(b) In addition to the information required by subsection (a) of this section for all offenses involving impaired driving as defined by G.S. 20-4.01, all charges of driving while license revoked for an impaired driving license revocation as defined by G.S. 20-28.2, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcoholic beverages, the clerk shall include in the electronic records the following information:

- (1) The reasons for any pretrial dismissal by the court.
- (2) The alcohol concentration reported by the charging officer or chemical analyst, if any.
- (3) The reasons for any suppression of evidence."

SECTION 20.2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-346.3. Impaired driving integrated data system report.

The information compiled by G.S. 7A-109.2 shall be maintained in an Administrative Office of the Courts database. By March 1, the Administrative Office of the Courts shall provide an annual report of the previous calendar year to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The annual report shall show the types of dispositions for the entire State by county, by judge, by prosecutor, and by defense attorney. This report shall also include the amount of fines, costs, and fees ordered at the disposition of the charge, the amount of any subsequent reduction, amount collected, and the amount still owed, and compliance with sanctions of community service, jail, substance abuse assessment, treatment, and education. The Administrative Office of the Courts shall facilitate public access to the information collected under this section by posting this information on the court's Internet page in a manner accessible to the public and shall make reports of any information collected under this section available to the public upon request and without charge."

PART XII. NOTICE PROCEDURE AND DRIVING WHILE LICENSE REVOKED AFTER FAILURE TO APPEAR

SECTION 21. G.S. 20-48 reads as rewritten:

"§ 20-48. Giving of notice.

(a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by ~~the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof,~~ a notation in the records of the Division that the notice was sent to a particular address and the purpose of the notice. A certified copy of the Division's records may be sent by the Police Information Network, facsimile, or other electronic means. A copy of the Division's records sent under the authority of this section is

admissible as evidence in any court or administrative agency and is sufficient evidence to discharge the burden of the person presenting the record that notice was sent to the person named in the record, at the address indicated in the record, and for the purpose indicated in the record. There is no requirement that the actual notice or letter be produced.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars (\$50.00)."

SECTION 22.1. G.S. 20-28 reads as rewritten:

"§ 20-28. Unlawful to drive while license ~~revoked~~ revoked, after notification, or while disqualified.

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

- (1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and
- (2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
 - b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or
- (3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated.

(a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a Class 1 misdemeanor if:

- (1) The person drives upon a highway while that person's license is revoked for an impaired drivers license revocation after the Division has sent notification in accordance with G.S. 20-48; or

- (2) The person fails to appear for two years from the date of the charge after being charged with an implied-consent offense.

Upon conviction, the person's drivers license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 3.

(c) When Person May Apply for License. – A person whose license has been revoked may apply for a license as follows:

- (1) If revoked under subsection (a) of this section for one year-year, the person may apply for a license after 90 days.
- (2) If punished under subsection (a1) of this section and the original revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of a drivers license, the person must obtain a substance abuse assessment and show proof of financial responsibility to the Division. If the assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified by the Division.
- (3) If revoked under subsection (a2) of this section for one year, the person may apply for a license after one year.
- (4) If revoked under this section for two years, the person may apply for a license after one year.
- (5) If revoked under this section permanently, the person may apply for a license after three years.~~A person whose license has been revoked under this section for two years may apply for a license after 12 months. A person whose license has been revoked under this section permanently may apply for a license after three years.~~

(c1) Upon the filing of an application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted of a moving violation under this Chapter or the laws of another state, a violation of any provision of the alcoholic beverage laws of this State or another state, or a violation of any provisions of the drug laws of this State or another state when any of these violations occurred during the revocation period.

(c2) The Division may impose any restrictions or conditions on the new license that the Division considers appropriate for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the Division may not exceed three years.

(c3) A person whose license is revoked for violation of subsection (a) of this section where the person's license was originally revoked for an impaired driving revocation, or a person whose license is revoked for a violation of subsection (a2) of this section, may only have the license conditionally restored by the Division pursuant to the provisions of subsection (c4) of this section.

(c4) For a conditional restoration under subsection (c3) of this section, the Division shall require at a minimum that the driver obtain a substance abuse assessment prior to issuance of a license and show proof of financial responsibility. If the substance abuse assessment recommends education or treatment, the person must complete the education or treatment within the time limits specified. If the assessment determines that

the person abuses alcohol, the Division shall require the person to install and use an ignition interlock system on any vehicles that are to be driven by that person for the period of time set forth in G.S. 20-17.8(c).

(c5) For licenses conditionally restored pursuant to subsections (c3) and (c4) of this section, the Division shall cancel the license and impose the remaining revocation period if any of the following occur:

- (1) The person violates any condition of the restoration.
- (2) The person is convicted of any moving offense in this or another state.
- (3) The person is convicted for a violation of the alcoholic beverage or controlled substance laws of this or any other state.

(d) Driving While Disqualified. – A person who was convicted of a violation that disqualified the person and required the person's drivers license to be revoked who drives a motor vehicle during the revocation period is punishable as provided in the other subsections of this section. A person who has been disqualified who drives a commercial motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is disqualified for an additional period as follows:

- (1) For a first offense of driving while disqualified, a person is disqualified for a period equal to the period for which the person was disqualified when the offense occurred.
- (2) For a second offense of driving while disqualified, a person is disqualified for a period equal to two times the period for which the person was disqualified when the offense occurred.
- (3) For a third offense of driving while disqualified, a person is disqualified for life.

The Division may reduce a disqualification for life under this subsection to 10 years in accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a commercial motor vehicle while the person is disqualified and the person's drivers license is revoked is punishable for both driving while the person's license was revoked and driving while disqualified."

SECTION 22.2. G.S. 20-17(a)(2) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

...

- (2) Either of the following impaired driving offenses:
 - a. Impaired driving under G.S. 20-138.1.
 - b. Impaired driving under ~~G.S. 20-138.2~~ G.S. 20-138.2, if the driver's alcohol concentration level was .06 or higher. For the purposes of this sub-subdivision, the driver's alcohol concentration level result, obtained by chemical analysis, shall be conclusive and is not subject to modification by any party, with or without approval by the court."

SECTION 22.3. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – ~~When~~ Except as provided in subsection (1) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

- (1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type

approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

- (2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.
- (3) An alcohol concentration restriction as follows:
 - a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;
 - b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or
 - c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 22.4. G.S. 20-17.8 is amended by adding a new subsection to read:

"(l) Medical Exception to Requirement. – A person subject to this section who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

PART XIII. MODIFYING CURRENT PUNISHMENTS

SECTION 23. G.S. 20-179 reads as rewritten:

"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. – After a conviction ~~for impaired driving~~ under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, G.S. 20-138.3, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge ~~must~~ shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor ~~must~~ shall make all feasible efforts to secure the defendant's full record of traffic convictions, and ~~must~~ shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor ~~must~~ shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor ~~must~~ shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor ~~must~~ shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of

justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. – A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court. –

(1) Defendant admits aggravating factor only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge-judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection shall be a matter to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

- (1) A prior conviction for an offense involving impaired driving if:
 - a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

- b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.
- (4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The judge, or the jury in superior court, must shall determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.
- (2) Especially reckless or dangerous driving.
- (3) Negligent driving that led to a reportable accident.
- (4) Driving by the defendant while his driver's license was revoked.
- (5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.
- (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
- (8) Passing a stopped school bus in violation of G.S. 20-217.
- (9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor ~~must~~ shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge ~~must~~shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge ~~must~~shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.
- (2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
- (3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
- (4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
- (5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- (6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
- (7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor ~~must~~shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, ~~he~~the judge ~~must~~shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

- (1) The aggravating factors substantially outweigh any mitigating factors, ~~he must~~the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).
- (2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, ~~he must~~the judge shall note in the judgment any factors found and ~~his~~the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).
- (3) The mitigating factors substantially outweigh any aggravating factors, ~~he must~~the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in

formulating terms and conditions of sentence after determining which punishment level ~~must~~ shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge ~~must~~ shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars (\$1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) ~~Not operate a motor vehicle for a term of at least 90 days; or~~
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars (\$500.00) and shall be sentenced to a term of

imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- ~~(3) Not operate a motor vehicle for a term of 60 days; or~~
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars (\$200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- ~~(3) Not operate a motor vehicle for a term of 30 days; or~~
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service ~~must~~shall be completed:

- (1) Within 90 days, if the amount of community service required is 72 hours or more; or
- (2) Within 60 days, if the amount of community service required is 48 hours; or

- (3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State ~~must shall~~ prove any grossly aggravating or aggravating factor ~~by the greater weight of the evidence, beyond a reasonable doubt,~~ and the defendant ~~must shall~~ prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he ~~must shall~~ give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge ~~must shall~~ afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
- (2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
- (3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

- (1) Community service; or
- (2) Repealed by Session Laws 1995 c. 496, s. 2.
- (3) Payment of any fines, court costs, and fees; or
- (4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment ~~or community service~~ to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

- (1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.
- (2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.
- (3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail, if
 - a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or
 - b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

- (t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 24. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-109.4. Records of offenses involving impaired driving.

The clerk of superior court shall maintain all records relating to an offense involving impaired driving as defined in G.S. 20-4.01(24a) for a minimum of 10 years from the date of conviction. Prior to destroying the record, the clerk shall record the name of the defendant, the judge, the prosecutor, and the attorney or whether there was a waiver of attorney, the alcohol concentration or the fact of refusal, the sentence imposed, and whether the case was appealed to superior court and its disposition."

SECTION 25. G.S. 20-17.2 is repealed.

PART XIV. MAKING IT ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO CONSUME AS WELL AS POSSESS ALCOHOL AND TO ALLOW ALCOHOL SCREENING DEVICES TO BE USED TO PROVE A PERSON HAS CONSUMED ALCOHOL

SECTION 26. G.S. 18B-302 reads as rewritten:

"§ 18B-302. Sale to or purchase by underage persons.

- (a) Sale. – It shall be unlawful for any person to:
 - (1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or
 - (2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.
- (b) ~~Purchase or Possession.~~ Purchase, Possession, or Consumption. – It shall be unlawful for:
 - (1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or
 - (2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed ~~beverages.~~ beverages; or
 - (3) A person less than 21 years old to consume any alcoholic beverage.
- ...
- (i) ~~Purchase or Possession~~Purchase, Possession, or Consumption by 19 or 20-Year Old. – A violation of subdivision (b)(1) or (b)(3) of this section by a person who is 19 or 20 years old is a Class 3 misdemeanor.
- (j) Notwithstanding any other provisions of law, a law enforcement officer may require any person the officer has probable cause to believe is under age 21 and has consumed alcohol to submit to an alcohol screening test using a device approved by the Department of Health and Human Services. The results of any screening device administered in accordance with the rules of the Department of Health and Human Services shall be admissible in any court or administrative proceeding. A refusal to submit to an alcohol screening test shall be admissible in any court or administrative proceeding.
- (k) Notwithstanding the provisions in this section, it shall not be unlawful for a person less than 21 years old to consume unfortified wine or fortified wine during participation in an exempted activity under G.S. 18B-103(4), (8), or (11)."

PART XV. REQUIRING THAT CERTAIN DWI DEFENDANTS WHO ARE RELEASED FROM PRISON EARLY ARE TO BE ASSIGNED COMMUNITY SERVICE PAROLE OR HOUSE ARREST

SECTION 27. G.S. 15A-1374 reads as rewritten:

"§ 15A-1374. Conditions of parole.

(a) In General. – The Post-Release Supervision and Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(a1) Required Conditions for Certain Offenders. – A person serving a term of imprisonment for an impaired driving offense sentenced pursuant to G.S. 20-179 that:

(1) Has completed any recommended treatment or training program required by G.S. 20-179(p)(3); and
(2) Is not being paroled to a residential treatment program;
shall, as a condition of parole, receive community service parole pursuant to G.S. 15A-1371(h), or be required to comply with subdivision (b)(8a) of this section.

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.
- (4) Support his dependents and meet other family responsibilities.
- (5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.
- (6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.
- (7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.
- (8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.
- (8a) Remain in one or more specified places for a specified period or periods each day and wear a device that permits the defendant's compliance with the condition to be monitored electronically.
- (9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.
- (10) Promptly notify the parole officer of any change in address or employment.
- (11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.
- (11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
- (11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.
- (11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in

pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of thirty dollars (\$30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

PART XVI. PREVENT NONCOMPLIANT PERMIT HOLDERS FROM CONTINUING IRRESPONSIBLE ALCOHOL SERVICE PRACTICES BY SWITCHING PERMITS TO ANOTHER NAME

SECTION 28. G.S. 18B-1003(c) reads as rewritten:

"(c) Certain Employees Prohibited. – A permittee shall not knowingly employ in the sale or distribution of alcoholic beverages any person who has been:

- (1) Convicted of a felony within three years;
- (2) Convicted of a felony more than three years previously and has not had his citizenship restored;
- (3) Convicted of an alcoholic beverage offense within two years; or
- (4) Convicted of a misdemeanor controlled substances offense within two years.
- (5) A past permit holder under Chapter 18B of the General Statutes whose permit had been revoked within the last 18 months and who had been the permit holder at the location where the person would be employed.

For purposes of this subsection, "conviction" has the same meaning as in G.S. 18B-900(b). To avoid undue hardship, the Commission may, in its discretion, exempt persons on a case-by-case basis from this subsection."

PART XVII. DWI TRAINING FOR JUDGES

SECTION 29. The North Carolina General Assembly requests that the Chief Justice of the North Carolina Supreme Court encourage the judges of this State to obtain continuing legal education on the laws of this State relating to driving while impaired offenses and related issues, and to promulgate any rules necessary to ensure that the judiciary receives necessary training and education on these laws.

PART XVIII. REQUIRE A DA SIGNATURE BEFORE A MOTION FOR APPROPRIATE RELIEF IS GRANTED IN DISTRICT COURT

SECTION 30. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

- (1) A motion for appropriate relief must:
 - a. Be made in writing unless it is made:
 1. In open court;
 2. Before the judge who presided at trial;
 3. Before the end of the session if made in superior court; and
 4. Within 10 days after entry of judgment;
 - b. State the grounds for the motion;
 - c. Set forth the relief sought; and
 - d. Be timely filed.

- (2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.
- (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
- (4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).

..."

PART XIX. SEIZURE AND FORFEITURE OF VEHICLE

SECTION 31. G.S. 20-28.2 reads as rewritten:

"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of "Impaired Driving License Revocation". – The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or
- (2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving; or
- (3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2).

(a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

- (1) Acknowledgment. – A written document acknowledging that:
 - a. The motor vehicle was operated by a person charged with an offense involving impaired ~~driving~~ driving, and:
 - 1. ~~while that~~ That person's drivers license was revoked as a result of a prior impaired drivers license revocation; or
 - 2. That person did not have a valid drivers license, and did not have liability insurance.
 - b. If the motor vehicle is again operated by this particular person, and the person is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if (i) at any time the offense occurs while that

- person's drivers license is revoked, or (ii) the offense occurs while the person has no valid drivers license, and has no liability insurance;~~and the person is charged with an offense involving impaired driving, the motor vehicle is subject to impoundment and forfeiture;~~ and
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.
- (1a) Fair Market Value. – The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.
 - (2) Innocent Owner. – A motor vehicle owner:
 - a. Who did not know and had no reason to know that (i) the defendant's drivers license was ~~revoked~~;revoked, or (ii) that the defendant did not have a valid drivers license, and that the defendant had no liability insurance; or
 - b. Who knew that (i) the defendant's drivers license was revoked, or (ii) that the defendant had no valid drivers license, and that the defendant had no liability insurance, but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;or
 - c. Whose vehicle was reported stolen;or
 - d. Repealed by Session Laws 1999-406, s. 17.
 - e. Who is in the business of renting vehicles, and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or
 - f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.
 - (2a) Insurance Company. – Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.
 - (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.
 - (3) Lienholder. – A person who holds a perfected security interest in a motor vehicle at the time of seizure.
 - (3a) Motor Vehicle Owner. – A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.
 - (4) Order of Forfeiture. – An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor

vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

- (5) Repealed by Session Laws 1998-182, s. 2.
- (6) Registered Owner. – A person in whose name a registration card for a motor vehicle is issued at the time of seizure.
- (7) Repealed by Session Laws 1998-182, s. 2.

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture; Forfeiture; Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

- (1) A hearing for the underlying offense involving impaired driving.
- (2) A separate hearing after conviction of the defendant.
- (3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the underlying offense involved impaired driving, and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section.

~~If at a sentencing hearing for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense becomes property subject to an order of forfeiture.~~

(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No License and No Insurance. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

- (1) A hearing for the underlying offense involving impaired driving.
- (2) A separate hearing after conviction of the defendant.
- (3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the underlying offense involved impaired driving, and: (i) the defendant was driving without a valid drivers license, and (ii) the defendant was not covered by an automobile liability policy."

SECTION 32. G.S. 20-28.3(a) reads as rewritten:

"§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license ~~revoked~~revoked or without license and insurance.

(a) Motor Vehicles Subject to Seizure. – A motor vehicle that is driven by a person who is charged with an offense involving impaired driving is subject to seizure if ~~if~~:

- (1) ~~at~~ At the time of the ~~violation~~-violation, the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in ~~G.S. 20-28.2(a)~~; G.S. 20-28.2(a); or
- (2) At the time of the violation:
 - a. The person was driving without a valid drivers license, and
 - b. The driver was not covered by an automobile liability policy.

For the purposes of this subsection, a person who has a complete defense, pursuant to G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a valid drivers license at the time of the violation."

PART XX. EFFECTIVE DATE

SECTION 33. Sections 20.1, 20.2, and the requirement that the Administrative Office of the Courts electronically record certain data contained in subsection (c) of G.S. 20-138.4, as amended by Section 19 of this act, become effective after the next rewrite of the superior court clerks system by the Administrative Office of the Courts. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 11:50 a.m. on the 21st day of August, 2006.

S.B. 1242

Session Law 2006-254

AN ACT TO AUTHORIZE THE MARINE FISHERIES COMMISSION TO ESTABLISH GEAR SPECIFIC PERMITS TO TAKE STRIPED BASS FROM THE ATLANTIC OCEAN, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-169.1 reads as rewritten:

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

(a) The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams.

(b) The Commission may adopt rules to establish gear specific permits to take striped bass from the Atlantic Ocean and to limit the number and type of these permits that may be issued to a person. The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed ten dollars (\$10.00) per permit."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 2:08 p.m. on the 22nd day of August, 2006.

S.B. 1587**Session Law 2006-255**

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THE REQUIREMENT THAT MOTOR VEHICLES OPERATED ON A FEDERAL INSTALLATION IN AN EMISSIONS COUNTY ARE SUBJECT TO EMISSIONS INSPECTION REQUIREMENTS; (2) CLARIFY THE REQUIREMENT THAT LAND-DISTURBING ACTIVITY BE CONDUCTED IN ACCORDANCE WITH AN APPROVED PLAN; (3) AUTHORIZE THE ENVIRONMENTAL REVIEW COMMISSION AND THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO CONTRACT FOR CONSULTANTS IN CERTAIN CIRCUMSTANCES; (4) PROVIDE THAT A PERSON WHO MANUFACTURES, INSTALLS, REPAIRS, OR PUMPS SEPTIC SYSTEMS MAY PURCHASE AND INSTALL APPROVED EFFLUENT FILTERS; (5) DELAY BY ONE YEAR THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF S.L. 2005-384, AN ACT TO REQUIRE THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES; (5.1) PROVIDE THAT SEPTAGE GENERATED BY THE OPERATION OF A WASTEWATER FACILITY PERMITTED UNDER ARTICLE 11 OF CHAPTER 130A OF THE GENERAL STATUTES MAY BE MANAGED AS PROVIDED BY G.S. 130A-291.1; (5.2) ESTABLISH THE EMERGENCY DRINKING WATER FUND; (5.3) PROVIDE, ON A TEMPORARY BASIS, THAT DONATIONS OF REAL PROPERTY TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES THAT SERVE AS ALTERNATIVES TO MAINTENANCE OF RIPARIAN BUFFERS ARE LIMITED TO A PROPERTY THAT IS LOCATED IN THE SAME RIVER BASIN AS THE RIPARIAN BUFFER THAT IS LOST BUT ARE NOT LIMITED TO A PROPERTY THAT IS LOCATED ON THE SAME STREAM AS THE RIPARIAN BUFFER THAT IS LOST; (5.4) MODIFY THE METHOD BY WHICH BASELINE EMISSIONS ARE DETERMINED FOR CERTAIN COAL-FIRED ELECTRIC GENERATING UNITS; (6) REMOVE DEER AND ELK FROM THE DEFINITION OF LIVESTOCK; (7) CLARIFY THAT THE FOR HIRE BLANKET COASTAL RECREATIONAL FISHING LICENSE IS ISSUED FOR THE FOR HIRE BOAT; (8) CLARIFY THAT SPECIAL LANDHOLDER AND GUEST FISHING LICENSES ONLY APPLY WHEN THE GUESTS ARE NONPAYING; (9) INCREASE THE TYPES OF LICENSES THAT THE WILDLIFE RESOURCES COMMISSION MAY ESTABLISH AS PERSONALIZED LICENSES; (10) CLARIFY THAT THE LIFETIME UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE IS A RESIDENT-ONLY LICENSE; (11) PROVIDE FOR THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE WILDLIFE RESOURCES COMMISSION, THE MARINE FISHERIES COMMISSION, AND THE DIVISION OF MARINE FISHERIES; (12) AUTHORIZE THE MARINE FISHERIES COMMISSION TO EXEMPT CERTAIN ORGANIZED FISHING EVENTS FROM LICENSE REQUIREMENTS; AND (13) CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO CARRY OUT CERTAIN RESPONSIBILITIES RELATED TO THE PREVENTION AND CONTROL OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

PART I. AMEND ENVIRONMENTAL LAWS

SECTION 1. G.S. 20-183.2(b)(1) reads as rewritten:

"(1) It is subject to registration with the Division under Article 3 of this ~~Chapter.~~Chapter, except for motor vehicles operated on a federal installation as provided in sub-subdivision e. of subdivision (5) of this subsection."

SECTION 2. G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 3.1. G.S. 120-70.44 reads as rewritten:

"§ 120-70.44. Additional powers.

(a) The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

(c) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 3.2. G.S. 120-70.63 reads as rewritten:

"§ 120-70.63. Additional powers.

(a) The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochair, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

(b) The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02."

SECTION 4. G.S. 130A-335.1(a) reads as rewritten:

"(a) ~~The manufacturer of each person who manufactures, installs, repairs, or pumps any~~ septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who manufactures, installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems. The person who installs the ~~septic tank system effluent filter~~ shall install the effluent filter as a part of the septic tank system in accordance with

the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

- (1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
- (2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.
- (3) Be designed and constructed to allow for routine maintenance.
- (4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 5. Section 4 of S.L. 2005-384 reads as rewritten:

"SECTION 4. Sections 1, 3, and 4 of this act are effective when this act becomes law, except that G.S. 130A-310.53, 130A-310.54(c), and 130A-310.55 become effective 1 July ~~2006~~2007. Section 2 of this act becomes effective 1 October 2005. Each vehicle manufacturer that is subject to the requirements of this act shall provide the information required by G.S. 130A-310.52(b), either individually or as a group of manufacturers, on or before 1 January ~~2006~~2007. This act expires on 1 July 2026."

SECTION 5.1.(a) G.S. 130A-291.1 is amended by adding a new subsection to read:

"(j) Septage generated by the operation of a wastewater system permitted under Article 11 of this Chapter may be managed as provided in this section and may be land applied at a septage land application site permitted under this section."

SECTION 5.1.(b) Management, including land application, of septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A of the General Statutes shall be governed by 40 Code of Federal Regulations Part 503 (1 July 2003 Edition) and rules adopted by the Commission for Health Services pursuant to G.S. 130A-291.1, as amended by subsection (a) of this section.

SECTION 5.2. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-98. Emergency Drinking Water Fund.

(a) The Emergency Drinking Water Fund is established within the Department.

(b) The Fund may be used to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business. The funds may also be used to cover the costs of testing private drinking water wells for contamination and for the provision of alternative drinking water supplies to persons whose drinking water well is contaminated.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative source of funds is not available. The funds shall not be used for remediation of groundwater contamination. Nothing in this section expands, contracts, or modifies the

obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or soil contamination.

(d) The Department shall establish criteria by which the Department is to evaluate applications and disburse funds from this Fund and may adopt any rules necessary to implement this section."

SECTION 5.3. If Senate Bill 1862, 2005 Regular Session, becomes law, then Senate Bill 1862, 2005 Regular Session is amended by adding a new section to read:

"**SECTION 2.1.** A donation of real property or of an interest in real property to the Department of Environment and Natural Resources, another State agency, a unit of local government, or a private nonprofit conservation organization under G.S. 143-214.20 shall be limited to property that is located in the same river basin as the riparian buffer that is lost but shall not be limited to a donation of property located on the same stream as the riparian buffer that is lost."

SECTION 5.4. The provisions of 15A NCAC 2D .0530(b)(1)(A)(iv) as adopted by the Environmental Management Commission on 10 February 2005 and as approved by the Rules Review Commission on 21 April 2005, do not apply to any application for an air quality permit that is submitted and determined to be administratively complete by the Department of Environment and Natural Resources on or before 1 August 2006. An air quality permit issued pursuant to an application described in this section shall both:

- (1) Include a requirement that the permittee will install advanced control technology designed to remove ninety-nine percent (99%) of any pollutants at each electric generating unit to which 15A NCAC 2D .0530(b)(1)(A)(iv) would otherwise apply and that the permittee will operate the advanced control technology at any time that electricity is being produced by the electric generating unit other than during startup of the unit.
- (2) State that the actual emissions of sulfur dioxide (SO₂) shall be no greater than 0.15 pound per million British Thermal Units (BTUs) as measured on a rolling 30-day average.

PART II. AMEND NATURAL RESOURCES LAWS

SECTION 6. G.S. 106-581.1(3) reads as rewritten:

"(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, ~~deer, elk,~~ and other animals for individual and public use, consumption, and marketing."

SECTION 7. G.S. 113-174.3(a) reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the ~~Division~~Division for the for hire boat. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. ~~This license~~A For Hire Blanket CRFL is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

- (1) Two hundred fifty dollars (\$250.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.
- (2) Three hundred fifty dollars (\$350.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers."

SECTION 8. G.S. 113-271(d)(9) reads as rewritten:

- "(9) Special Landholder and Guest Fishing License – \$50.00. This license shall be issued only to the ~~owner or lessee~~landholder of private property bordering inland or joint fishing waters, ~~including public mountain trout waters, and entitles persons waters.~~ This license shall entitle the landholder and guests of the landholder to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishingThis license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. The guest fishingThis license is not transferable as to person or location. For purposes of this subdivision, a guest is any individual invited by the landholder to fish from the property at no charge. A charge includes any fee, assessment, dues, rent, or other consideration which must be paid, whether directly or indirectly, in order to be allowed to fish from the property, regardless of the stated reason for such charge."

SECTION 9. G.S. 113-272.3(d) reads as rewritten:

"(d) In issuing lifetime ~~sportsman combination~~ licenses, the Wildlife Resources Commission is authorized to adopt rules to establish a personalized series for certain license types and to charge a five dollar (\$5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license."

SECTION 10. G.S. 113-351(c)(4)a. reads as rewritten:

- "(4) Lifetime Unified Inland/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions b. and c. of this subdivision, a license issued under this subdivision is valid for the lifetime of the licensee. A license issued under this subdivision authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, including public mountain trout waters, and to engage in recreational fishing in coastal fishing waters.
- a. Resident Lifetime Unified Inland/Coastal Recreational Fishing License. – \$450.00.

...."

SECTION 11.1. G.S. 143-254.5 reads as rewritten:

"§ 143-254.5. Disclosure of personal identifying information.

(a) ~~Personal identifying information obtained by the Commission from an applicant for a license, title, permit, or registration issued by the Commission, from a consumer who purchases or subscribes to a good or service offered by the Commission,~~

~~or from a donor in connection with any gift to the Commission is confidential under G.S. 132-1.2 and shall only be disclosed by the Commission as provided in this section.~~

~~(b) Personal identifying information obtained from the holder of a license issued under Article 14B or Article 25A of Chapter 113 of the General Statutes shall be disclosed to the Division of Marine Fisheries and the Marine Fisheries Commission.~~

~~(c) Personal identifying information may be disclosed to any officer, employee, or authorized representative of any federal, state, or local government agency if disclosure is necessary to carry out a proper function of the Commission or other agency.~~

~~(d) As used in this section, "personal identifying information" includes a person's mailing address, residence address, date of birth, telephone number, electronic mail address, driver license number, and social security number. Social security numbers and identifying information obtained by the Commission shall be treated as provided in G.S. 132-1.10. For purposes of this section, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number.~~

SECTION 11.2. G.S. 143B-289.52(h) reads as rewritten:

~~"(h) Neither the Commission nor the Department may disclose personal information provided by an applicant for a license issued under Article 14A or 14B of Chapter 113 of the General Statutes. Social security numbers and identifying information obtained by the Commission or the Division of Marine Fisheries shall be treated as provided in G.S. 132-1.10. For purposes of this subsection, 'identifying information' also includes a person's mailing address, residence address, date of birth, and telephone number."~~

SECTION 12. G.S. 143B-289.52 is amended by adding a new subsection to read:

~~"(i) The Commission may adopt rules to exempt individuals who participate in organized fishing events held in coastal or joint fishing waters from recreational fishing license requirements for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission."~~

PART III. CLARIFY AUTHORITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

SECTION 13.1. G.S. 130A-4(c) reads as rewritten:

~~"(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission."~~

SECTION 13.2. G.S. 130A-12 reads as rewritten:

"§ 130A-12. Confidentiality of records.

~~All records containing privileged patient medical ~~information~~ ~~or information~~, information protected under 45 C.F.R. ~~Code of Federal Regulations~~ Parts 160 and 164 164, and information collected under the authority of Part 4 of Article 5 of this Chapter that are in the possession of the Department of Health and Human Services, the Department of Environment and Natural Resources, or local health departments shall be confidential and shall not be public records pursuant to G.S. 132-1. Information contained in the records may be disclosed only when disclosure is authorized or required by State or federal law. Notwithstanding G.S. 8-53 or G.S. 130A-143, the information contained in the records may be disclosed for purposes of treatment,~~

payment, or health care operations. For purposes of this section, the terms "treatment," "payment," and "health care operations" have the meanings given those terms in 45 C.F.R. Code of Federal Regulations § 164.501."

SECTION 13.3. G.S. 130A-17(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.4. G.S. 130A-18(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.5. G.S. 130A-19(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

SECTION 13.6. G.S. 130A-20(b) reads as rewritten:

"(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Part 4 of Article 5 and Articles 8, 9, 10, 11, and 12 of this Chapter."

PART IV. EFFECTIVE DATE

SECTION 14. Section 5 of this act is effective retroactively to 1 July 2006. Section 5.3 of this act becomes effective 1 August 2006 and expires 1 September 2007. All other sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Became law upon approval of the Governor at 12:50 p.m. on the 23rd day of August, 2006.

S.B. 1564

Session Law 2006-256

AN ACT TO AMEND THE STATUTES GOVERNING SANITARY LANDFILL FRANCHISE ORDINANCES AND AGREEMENTS TO CLARIFY THAT LOCAL GOVERNMENTS MAY, BUT ARE NOT REQUIRED TO, AWARD SANITARY LANDFILL FRANCHISES; TO PROVIDE FOR THE AWARD OF PRELIMINARY FRANCHISES AS WELL AS FRANCHISES AND TO SPECIFY THE INFORMATION TO BE INCLUDED THEREIN; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE AWARDED ONLY AFTER ADEQUATE PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC PARTICIPATION IN THE DECISION TO AWARD THE FRANCHISE; TO PROVIDE THAT FRANCHISES ARE AWARDED ONLY AFTER PUBLIC NOTICE OF THE LOCATION OF THE PROPOSED SANITARY LANDFILL; TO ENSURE THAT SANITARY LANDFILL FRANCHISES ARE CONSISTENT

WITH LOCAL SOLID WASTE MANAGEMENT PLANS AND ARE SUBJECT TO LOCAL GOVERNMENT OVERSIGHT AND REGULATION OF RATES AND FEES; AND TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES TO ANY APPLICATION FOR A PRELIMINARY FRANCHISE OR FRANCHISE THAT IS FILED WITH A LOCAL GOVERNMENT ON OR AFTER THAT DATE AND THAT THIS ACT DOES NOT AFFECT ANY FRANCHISE THAT HAS BEEN AWARDED AS OF THE DATE ON WHICH THIS ACT BECOMES EFFECTIVE UNLESS THE FRANCHISE PROVIDES FOR A FINAL VOTE OF THE GOVERNING BOARD OF THE LOCAL GOVERNMENT ON THE FRANCHISE AND THE FINAL VOTE OCCURS ON OR AFTER 1 NOVEMBER 2006, IN WHICH CASE THE PROVISIONS OF G.S. 130A-294(B1), AS AMENDED BY THIS ACT, APPLY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294(b1)(3) is recodified as G.S. 130A-294(b1)(2) and reads as rewritten:

~~"(3)(2)An applicant~~ A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government ~~shall~~ may adopt a franchise ordinance under G.S. 153A-136 or ~~G.S. 160A-319~~ prior to the submittal by an applicant of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. G.S. 160A-319. A franchise granted for a sanitary landfill shall ~~include~~ include all of the following:

- a. A statement of the population to be served, including a description of the geographic area.
- b. A description of the volume and characteristics of the waste stream.
- c. A projection ~~on~~ of the useful life of the sanitary landfill.
- d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.
- e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
- f. A facility plan for the sanitary landfill that shall include the exact boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls,

and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility."

SECTION 2. G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2a) A local government may elect to award a preliminary franchise. If a local government elects to award a preliminary franchise, the preliminary franchise shall contain, at a minimum, all of the information described in sub-subdivisions a. through e. of subdivision (2) of this subsection plus a general description of the proposed sanitary landfill, including the approximate number of acres required for the proposed sanitary landfill and its appurtenances and a description of any other solid waste management activities that are to be conducted at the site."

SECTION 3. G.S. 130A-294(b1)(2) is recodified as G.S. 130A-294(b1)(3) and reads as rewritten:

~~"(2)(3) Within 10 days after receiving an application for a permit, for the renewal of a permit, or for a substantial amendment to a permit for a sanitary landfill, the Department shall notify the clerk of the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located and, if the sanitary landfill is proposed to be located or is located within a city, the clerk of the governing board of the city, that the application has been filed and shall file a copy of the application with the clerk. Prior to the award of a franchise for the construction or operation of a sanitary landfill, the issuance of a permit, the renewal of a permit, or a substantial amendment to a permit, the board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall conduct a public hearing when sufficient public interest exists. hearing. The board of commissioners of the county or counties in which the sanitary landfill is proposed to be located or is located or, if the sanitary landfill is proposed to be located or is located in a city, the governing board of the city shall provide adequate notice at least 30 days' notice to the public of the public hearing hearing. The notice shall include a summary of all the information required to be included in the franchise, and shall specify the procedure to be followed at the public hearing. The applicant for the franchise shall provide a copy of the application for the franchise that includes all of the information required to be included in the franchise, to the public library closest to the proposed sanitary landfill site to be made available for inspection and copying by the public."~~

SECTION 4. This act is effective when it becomes law and applies to any application for a preliminary franchise or franchise that is filed with a local government on or after that date. This act does not affect any franchise that has been awarded as of the date on which this act becomes effective unless the franchise provides for a final

vote of the governing board of the local government on the franchise and the final vote occurs on or after 1 November 2006, in which case the provisions of G.S. 130A-294(b1), as amended by this act, apply.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 12:52 p.m. on the 23rd day of August, 2006.

H.B. 267

Session Law 2006-257

AN ACT TO AUTHORIZE EIGHT-YEAR DRIVERS LICENSES AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, AND TO PROVIDE FOR THE ISSUANCE OF TEMPORARY DRIVING CERTIFICATES PENDING THE ISSUANCE OF A DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(f) reads as rewritten:

"(f) Duration and Renewal of Licenses. – Expiration and Temporary License.—~~The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. A first drivers license may be issued for a shorter duration if the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration issued by the United States Department of Homeland Security. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five. Drivers licenses shall be issued and renewed pursuant to the provisions of this subsection.~~

- (1) Duration of license for persons under age 18. – A full provisional license issued to a person under the age of 18 shall expire on the person's twenty-first birthday.
- (2) Duration of license for persons at least 18 years of age or older. – A drivers license issued to a person at least 18 years old but less than 54 years old expires eight years after the date of issuance. A drivers license issued to a person at least 54 years old expires five years after the date of issuance.
- (3) Duration of license. – A drivers license that was issued by the Division and is renewed by the Division expires ~~five years at the end of the period provided by this subsection~~ after the expiration date of the license that is renewed unless the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. A person may apply to the Division to renew a license during the 180-day period before the

license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(4) Renewal by mail. – The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

(1)a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

(2)b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State".

SECTION 2. G.S. 20-7(f) is amended by adding a new subdivision to read:

"(5) License to be sent by mail. – The Division shall issue to the applicant a temporary driving certificate valid for 20 days, unless the applicant is applying for renewal by mail under subdivision (4) of this subsection. The temporary driving certificate shall be valid for driving purposes only and shall not be valid for identification purposes. The Division shall produce the applicant's drivers license at a central location and send it to the applicant by first-class mail at the residence address provided by the applicant."

SECTION 3. Section 1 of this act becomes effective January 1, 2007.

Section 2 of this act becomes effective July 1, 2008.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 12:56 p.m. on the 23rd day of August, 2006.

H.B. 1825

Session Law 2006-258

AN ACT TO DELAY IMPLEMENTATION OF THE REVISED SECONDARY ROAD FORMULA TO JULY 1, 2007; TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO PAVE SECONDARY ROADS ON A REDUCED RIGHT-OF-WAY, IF THE DIVISION ENGINEER DETERMINES IT CAN BE DONE SAFELY; TO REQUIRE THAT THE DEPARTMENT OF TRANSPORTATION, BEGINNING IN THE 2006-2007 FISCAL YEAR AND UNTIL THE 2009-2010 FISCAL YEAR, SET ASIDE UP TO FIVE MILLION DOLLARS TO PAY FOR THE PAVING OF ANY UNPAVED SECONDARY ROAD THAT HAD PREVIOUSLY BEEN DETERMINED TO BE INELIGIBLE FOR PAVING; AND TO REQUIRE THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY THE COST OF PAVING AND MAINTENANCE OF PAVED AND UNPAVED SECONDARY ROADS IN DIFFERENT GEOGRAPHIC AREAS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2005-404 reads as rewritten:

"**SECTION 4.** This act becomes effective July 1, 2006-2007."

SECTION 2. G.S. 136-44.5(b) reads as rewritten:

"(b) The first sixty-eight million six hundred seventy thousand dollars (\$68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of paved and unpaved State-maintained secondary roads in the county divided by the total number of miles of paved and unpaved State-maintained secondary roads in the State, excluding those unpaved secondary roads that have been determined to be eligible for paving as defined in subsection (a) of this section. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage."

SECTION 3. G.S. 136-182 reads as rewritten:**"§ 136-182. Supplement for secondary road construction.**

Funds are allocated from the Trust Fund to increase allocations for secondary road construction made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads with a traffic vehicular equivalent of at least 50 vehicles a day can be paved by the 2009-2010 fiscal year. If all the State-maintained roads in a county have been paved under G.S. 136-44.7, except those that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, then the funds may be used for safety improvements on the paved or unpaved secondary roads in that county.

The Department shall make every effort to acquire right-of-way for the purpose of paving unpaved State secondary roads included in the annual secondary road program. The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all circumstances the safety of the public is not compromised and the minimum accepted design practice is satisfied."

SECTION 4. G.S. 136-182, as amended by S.L. 2005-404, and as amended by Sections 1 and 3 of this act, reads as rewritten:

"§ 136-182. Supplement for secondary road improvement.

Funds are allocated from the Trust Fund to increase allocations for secondary road improvement made under G.S. 136-44.2A so that all State-maintained unpaved secondary roads eligible for paving pursuant to G.S. 136-44.5(a) can be paved by the 2009-2010 fiscal year.

Allocations of these funds shall be based on the percentage proportion of the number of miles in the county of State-maintained unpaved secondary roads that are eligible to be paved under G.S. 136-44.5(a) bears to the total number of miles in the State of State-maintained unpaved secondary roads that are eligible to be paved.

As an exception to the formula for the allocation of these funds, the Department ~~may, shall,~~ beginning in the 2006-2007 fiscal year and until the 2009-2010 fiscal year, set aside up to five million dollars (\$5,000,000) to pay for the paving of any unpaved secondary road that had previously been determined to be ineligible for paving.

Beginning in fiscal year 2010-2011, allocations from the Trust Fund shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

The Department shall make every effort to acquire right-of-way for the purpose of paving unpaved State secondary roads included in the annual secondary road program. The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all

circumstances the safety of the public is not compromised and the minimum accepted design practice is satisfied."

SECTION 5. The Joint Legislative Transportation Oversight Committee shall conduct a study of the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of the State. The Committee shall complete its report by March 1, 2007.

SECTION 6. Sections 2 and 4 of this act become effective July 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 12:58 p.m. on the 23rd day of August, 2006.

S.B. 1523

Session Law 2006-259

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
- (2) The state and county of commissioning of the registrant.
- (3) The expiration date of the registrant's notary commission.
- (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
- (5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
- (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
- (7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in ~~subsection (7)~~, subdivision (7) of this subsection, which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule."

SECTION 2. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

- (1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

- (5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

- (6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 3. If House Bill 1432, 2005 Regular Session, becomes law, Section 1 of this act is repealed. If Senate Bill 1479, 2005 Regular Session, becomes law, Section 2 of this act is repealed.

PART II. OTHER CHANGES**SECTION 4.(a)** G.S. 14-72(b) reads as rewritten:

"(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is any of the following:

- (1) From the ~~person; or person.~~
- (2) Committed pursuant to a violation of G.S. 14-51, 14-53, ~~14-54~~14-54, 14-54.1, or 14-57; or 14-57.
- (3) Of any explosive or incendiary device or substance. As used in this section, the phrase "explosive or incendiary device or substance" shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.
- (4) Of any firearm. As used in this section, the term "firearm" shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A "firearm," which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.
- (5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and G.S. 121-2(8)."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 5.(a) G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

- (1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
- (2) Civil and law enforcement officers of the United States;
- (3) Officers and soldiers of the militia and the national guard when called into actual service;
- (4) Officers of the State, or of any ~~county, city, or town,~~ county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;
- (5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 5.(b) G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

- (1) Real property owned by or in the possession and control of their employer.
- (2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.
- (3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with ~~G.S. 14-269(b)(5).~~ G.S. 14-269(b)(4) and (5)."

SECTION 5.(c) This section becomes effective October 1, 2006.

SECTION 6. G.S. 14-306.1A, as enacted by Section 4 of S.L. 2006-6, is amended by adding a new subsection to read:

"(f) Machines described in G.S. 14-306(b)(1) are excluded from this section."

SECTION 7.(a) G.S. 14-409.11 reads as rewritten:

"§ 14-409.11. **"Antique firearm" defined.**

(a) The term "antique firearm" means any of the following:

- (1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured on or before 1898.
- (2) Any replica of any firearm described in subdivision (1) of this subsection if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.
- (3) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder substitute, and which cannot use fixed ammunition.

(b) For purposes of this section, the term "antique firearm" shall not include any weapon which:

- (1) Incorporates a firearm frame or receiver.
- (2) Is converted into a muzzle loading weapon.
- (3) Is a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

~~The term "antique firearm" means any firearm manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1898; and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade."~~

SECTION 7.(b) G.S. 14-415.1(a) reads as rewritten:

"(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon."

SECTION 8.(a) G.S. 18C-130(a) reads as rewritten:

"(a) The Commission shall determine the ~~type types~~ of lottery games that may be used in the Lottery. Games may include instant lotteries, online games, games played on computer terminals or other devices, and other games traditional to a lottery or that have been conducted by any other state government-operated lottery."

SECTION 8.(b) G.S. 18C-131(e) reads as rewritten:

"(e) It shall be a defense for the person who sold a ticket or share in violation of subsection (d) of this section if the person does either of the following:

- (1) Shows that the purchaser produced a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser to be at least 18 years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.
- (2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least 18 years old."

SECTION 8.(c) G.S. 18C-111(a) reads as rewritten:

"(a) The Commission shall consist of nine members, 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. Commissioners may be removed by the appointing authority for cause. The Governor shall select the chair of the Commission from among its membership, who shall serve at the pleasure of the Governor."

SECTION 8.(d) G.S. 18C-151(e) reads as rewritten:

"(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.~~ G.S. 18C-152(c). Any contract with a lottery contractor

who does not periodically update the required disclosures may be terminated by the Commission."

SECTION 8.(e) G.S. 18C-164(a) reads as rewritten:

"(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 four times a year to the Education Lottery Fund, which shall be created in the State treasury."

SECTION 8.(f) G.S. 105-163.2B reads as rewritten:

"§ 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~~ in an amount of six hundred dollars (\$600.00) or more. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a ~~return and return~~ pay the withheld taxes, and report the amount withheld 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 8.(g) G.S. 114-19.16 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 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 vendor, a form signed by the prospective employee of the Commission, or of the prospective 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 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 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 8.(h) G.S. 115C-499.1(3) reads as rewritten:

"(3) Eligible postsecondary institution. – A school that is:

- a. A constituent institution of The University of North Carolina as defined in G.S. 116-2(4);
- b. A community college as defined in G.S. 115D-2(2); or
- c. A nonpublic postsecondary institution as defined in G.S. 116-22(1) or ~~116-43.5(a)(1)~~ G.S. 116-43.5(a)(1)."

SECTION 8.(i) G.S. 115C-546.2(d)(2) reads as rewritten:

"(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 ~~effective~~ 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 for the previous fiscal year 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)."

SECTION 8.(j) S.L. 2005-276 is amended by adding a new section to read:

"SECTION 31.1(jj) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

'SECTION 10.4. Section 10.3 of this act is effective for taxable years beginning on or after January 1, 2005.' "

SECTION 8.(k) S.L. 2005-344 is amended by adding a new section to read:

"SECTION 2.1. The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under this act."

SECTION 8.(l) Section 12 of S.L. 2005-344 reads as rewritten:

"SECTION 12. The first security audit required under ~~G.S. 18C-123(a)~~G.S. 18C-122(a) shall be conducted at the beginning of the first calendar year after the effective date of this act. The first audit required under ~~G.S. 18C-123(d)~~G.S. 18C-122(d) shall be conducted at the end of the first fiscal year after the effective date of this act."

SECTION 9. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

- (1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.
- (2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if

the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that has been called to the scene by a motorist or a law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 10.(a) G.S. 20-171.19 is amended by adding a new subsection to read:

"(a1) Notwithstanding subsection (a) of this section, any person employed by a supplier of retail electric service, while engaged in power line inspection, may operate an all-terrain vehicle while wearing both of the following:

- (1) Head protection equipped with a chin strap that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor.
- (2) Eye protection that conforms to the standards applicable to suppliers of retail electric service adopted by the Occupational Safety and Health Division of the North Carolina Department of Labor."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 11.(a) G.S. 20-217(g) reads as rewritten:

"(g) Any person who willfully violates subsection (a) of this section and ~~willfully~~ strikes any person causing serious bodily injury to that person shall be guilty of a Class I felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to acts committed on or after that date.

SECTION 12. G.S. 20-288(g), as enacted by Section 2.3 of S.L. 2006-105, reads as rewritten:

"(g) A corporate surety may refuse to renew a surety bond furnished pursuant to this section by giving or mailing written notice of nonrenewal to the license holder and to the Commissioner not less than 30 days prior to the premium anniversary date of the surety bond. The notice must be given or mailed by certified mail to the license holder at its last known address. ~~Cancellation~~ Nonrenewal of the surety bond shall not affect any liability incurred or accrued prior to the premium anniversary date of the surety bond."

SECTION 13.(a) G.S. 36C-2-206 reads as rewritten:

"§ 36C-2-206. **Representation of parties.**

(a) ~~In~~ Notwithstanding any other applicable rule of the Rules of Civil Procedure or provision of Chapter 1 of the General Statutes, in any trust proceeding or action, proceeding, whether brought before the clerk of superior court or in the superior court division of the General Court of Justice, the parties shall be represented as provided in Article 3 of this Chapter. ~~the following rules apply notwithstanding any other applicable Rule of Civil Procedure or provision of Chapter 1 of the General Statutes:~~

- (1) ~~Parties shall be represented as provided in Article 3 of this Chapter.~~

(b) (2) In the case of any party represented by another as provided in subdivision (1) subsection (a) of this section, service of process shall be made by serving such representative."

SECTION 13.(b) G.S. 36C-4-408 reads as rewritten:**"§ 36C-4-408. Trust for care of animal.**

(a) Subject to this section, a trust for the care of one or more designated domestic or pet animals alive at the time of creation of the trust is valid.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of the designated animal or animals.

(c) The trust terminates at the death of the animal or last surviving animal. Upon termination, the trustee shall transfer the unexpended trust property in the following order:

- (1) As directed in the trust ~~instrument;~~instrument.
- (2) If the trust was created in a preresiduary clause in the ~~transferor's~~settlor's will or in a codicil to the ~~transferor's~~settlor's will, under the residuary clause in the ~~transferor's will;~~settlor's will.
- (3) If no taker is produced by the application of subdivision (1) or (2) of this subsection, to ~~the transferor or the transferor's heirs~~ the settlor, if then living, otherwise to the settlor's heirs determined as of the date of the ~~transferor's~~settlor's death under Chapter 29 of the General Statutes.

(d) The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument or, if none, by a person appointed by the clerk of superior court having jurisdiction over the ~~decedent's estate~~ trust upon application to the clerk of superior court by a person.

(e) Except as ordered by the clerk of superior court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, bond, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(f) A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the ~~transferor.~~settlor. Extrinsic evidence is admissible in determining the ~~transferor's~~settlor's intent.

(g) The clerk of superior court may reduce the amount of the property transferred, if the clerk of superior court determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (c) of this section.

(h) If no trustee is designated or if no designated trustee agrees to serve or is able to serve, the clerk of superior court must name a trustee. The clerk of superior court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. The clerk of superior court may also make other orders and determinations as are advisable to carry out the intent of the ~~transferor~~ settlor and the purpose of this section."

SECTION 13.(c) G.S. 36C-4-410(c) is repealed.

SECTION 13.(d) G.S. 36C-4-411(e) is repealed.

SECTION 13.(e) G.S. 36C-4-412(c) is repealed.

SECTION 13.(f) G.S. 36C-4-414(d) is repealed.

SECTION 13.(g) G.S. 36C-4-416 reads as rewritten:

"§ 36C-4-416. Modification to achieve settlor's tax objectives.

To achieve a settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide

that the modification has retroactive effect. ~~Jurisdiction of a proceeding brought under this section shall be as provided in G.S. 36C-2-203.~~"

SECTION 13.(h) G.S. 36C-4-417(a) reads as rewritten:

"(a) Unless otherwise provided in the trust instrument, ~~after notice to the qualified beneficiaries,~~ a trustee ~~may~~ may do any of the following:

- (1) Consolidate the assets of more than one trust and administer the assets as one trust under the terms of one of the trusts if the terms of the trusts are substantially similar and the beneficiaries of the trusts are ~~identical; or~~ identical.
- (2) Divide one trust into two or more separate trusts if the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust."

SECTION 13.(i) G.S. 36C-4-419 reads as rewritten:

"§ 36C-4-419. **Effect of inalienable interest on modification or termination.**

The court, in exercising its discretion to modify or terminate an irrevocable trust under G.S. 36C-4-411, 36C-4-412, or ~~36C-4-413~~ 36C-4-414 shall consider provisions making the interest of a beneficiary inalienable, including those described in Article 5, but the court is not precluded from the exercise of that discretion solely because of such provisions."

SECTION 13.(j) G.S. 36C-7-701(b) reads as rewritten:

"(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a ~~reasonable time,~~ 120 days after written notice to accept the trusteeship is provided after receiving written notice of the trusteeship is considered to have rejected the trusteeship."

SECTION 13.(k) G.S. 36C-8-815 reads as rewritten:

"§ 36C-8-815. **General powers of trustee.**

(a) A trustee, without authorization by the court, may ~~exercise~~ exercise any of the following:

- (1) Powers conferred by the terms of the ~~trust; or~~ trust.
- (2) Except as limited by the terms of the trust:
 - a. All powers over the trust property that an unmarried competent owner has over individually owned property;
 - b. Any other powers appropriate to achieve the proper investment, management, administration, or distribution of the trust property; and
 - c. Any other powers conferred by this Chapter.

(b) ~~The exercise of a power is subject to the fiduciary duties prescribed by this Article.~~ No provision of this section shall relieve a trustee of the fiduciary duties under this Article."

SECTION 13.(l) G.S. 6-21.5 reads as rewritten:

"§ 6-21.5. **Attorney's fees in nonjusticiable cases.**

In any ~~civil action or special proceeding~~ civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a

sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section."

SECTION 13.(m) G.S. 32-55 reads as rewritten:

"§ 32-55. Notice.

(a) The trustee shall give written notice to all beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. The notice shall contain a statement that the beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 3 of Chapter 36A Article 2 of Chapter 36C of the General Statutes."

SECTION 13.(n) G.S. 32-57(a) reads as rewritten:

"(a) The trustee or any beneficiary may initiate a proceeding under Article 3 of Chapter 36A Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired."

SECTION 13.(o) G.S. 32-71 reads as rewritten:

'§ 32-71. Investment; prudent person rule.

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall observe the standard of judgment and care under the circumstances then prevailing, which an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary; and if the fiduciary has special skills or is named a fiduciary on the basis of representations of special skills or expertise, he is under a duty to use those skills. This subsection and subsection (b) of this section do not apply to trusts governed by Article 15 of this Chapter, Article 9 of Chapter 36C of the General Statutes.

(b) Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and Article 15 of this Chapter, Article 9 of Chapter 36C of the General Statutes, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract; or (iii) to diversify any such contract.

A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(d) The trustee of a trust described under subsection (c) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (c) of this section shall apply to the trust. Subsection (c) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (c) of this section shall not apply.' "

SECTION 13.(p) G.S. 37A-2-202(b) reads as rewritten:

"(b) In determining a beneficiary's share of net income, the following rules apply:

- (1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.
- (2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in ~~trust~~ trust to which G.S. 37A-2-201(3) applies.
- (3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.
- (4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed."

SECTION 13.(q) G.S. 53-163.5(d) reads as rewritten:

"(d) Such bank or trust company may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided that (i) such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or amendment thereof; ~~(ii) in the case of co-fiduciaries the written consent of the co-fiduciary is obtained by the bank or trust company; and (iii) thereof, and (ii) that the bank has no interest in the assets of the common trust fund other than as a fiduciary.~~

SECTION 13.(r) The Revisor of Statutes is authorized to cause to be printed any amendments to the explanatory comments of the drafters of S.L. 2005-192 that are prepared by the drafters of this section, as the Revisor deems appropriate.

SECTION 13.(s) This section becomes effective October 1, 2006, and applies to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings concerning trusts commenced on or after that date; and (iii) all judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the law as it existed on September 30, 2006, shall apply.

SECTION 14.(a) G.S. 53B-2(3) reads as rewritten:

- "(3) "Financial record" means an original of, a copy of, or information derived from, a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer. Financial record shall not include forged or counterfeit financial instruments or records relating

to an account established under a fictitious name or another person's name without proper authorization."

SECTION 14.(b) G.S. 53B-4 reads as rewritten:

"§ 53B-4. Access to financial records.

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant ~~to~~ to any of the following:

- (1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a ~~fiduciary~~; fiduciary.
- (2) Authorization under G.S. 105-251, 105-251.1, or ~~105-258~~; 105-258.
- (3) Search warrant as provided in Article 11 of Chapter 15A of the ~~General Statutes~~; Statutes.
- (4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial ~~institution~~; institution.
- (5) The authority granted under G.S. 116B-72 and G.S. ~~116B-75~~; 116B-75.
- (6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~G.S. 147-64.7(a)~~; 147-64.7(a).
- (7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student ~~loans~~; loans.
- (8) Pending litigation to which the government authority and the customer are ~~parties~~; parties.
- (9) Subpoena or court order in connection with a grand jury ~~proceeding~~; proceeding.
- (10) A writ of execution under Article 28 of Chapter 1 of the General ~~Statutes~~; or Statutes.
- (11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.
- (12) The authority granted to the Attorney General under Chapter 75 of the General Statutes.

As used in this section, the term "reasonable specificity" means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class."

SECTION 14.(c) This section becomes effective October 1, 2006, and applies to acts committed on or after that date.

SECTION 14.5(a). If Senate Bill 602, 2005 Regular Session becomes law, then Section 44(b) of that act is repealed.

SECTION 14.5(b). If Senate Bill 1479, 2005 Regular Session, becomes law, then G.S. 55-11-05(d), as enacted by Section 22 of S.L. 2005-268 and amended by Section 16(b) of Senate Bill 1479, 2005 Regular Session, reads as rewritten:

'(d) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09, or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 15. G.S. 62-182.1 reads as rewritten:

"§ 62-182.1. Access to dedicated public right-of-way.

When any map or plat of a subdivision, recorded as provided in G.S. 47-30 and G.S. 136-102.6, reflects the dedication of a public street or other public right-of-way, the dedicated public street or public right-of-way shall, upon recordation of the map or plat, become immediately available for use by any public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system to install, maintain, and operate lines, cables, or facilities for the provision of service to the public. No public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system shall place or erect any line, cable, or facility in, over, or upon a street or right-of-way in a subdivision that is intended to become a public street or public right-of-way, until a map or plat of the subdivision has been recorded as provided in G.S. 47-30 and G.S. 136-102.6, and except in accordance with procedures established by the Department of Transportation, Division of Highways, for accommodating utilities or cable television systems on highway rights-of-way. Upon recordation of a map or plat of a subdivision as provided in G.S. 47-30 and G.S. 136-102.6, no liability shall attach to the developer of the property as a result of any activity of a public ~~utility~~ utility, telephone membership corporation organized under G.S. 117-30, or cable television system occurring in the dedicated public street or public right-of-way. Nothing in this section shall relieve the developer of the property of responsibilities under G.S. 136-102.6."

SECTION 16.(a) G.S. 90-85.46(2)b. reads as rewritten:

"b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a)~~G.S. 90-85.21A to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services."

SECTION 16.(b) G.S. 90-85.47(a) reads as rewritten:

"(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or ~~G.S. 90-85.21(a)~~G.S. 90-85.21A shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

- (1) The quality of the practice of pharmacy.
- (2) The cause of alleged medication errors and incidents.
- (3) Pharmaceutical care outcomes.
- (4) Possible improvements for the practice of pharmacy.
- (5) Methods to reduce alleged medication errors and incidents."

SECTION 17. G.S. 93E-1-7(a) reads as rewritten:

"(a) Trainee registrations, licenses, and certificates issued under this Chapter shall expire on the 30th day of June of every year and shall become invalid after that date unless renewed prior to the expiration date by filing an application with and paying to

the Executive Director of the Board the fee of two hundred dollars (\$200.00). As a prerequisite to the renewal of a trainee registration or a real estate appraiser license or certificate, the trainee registration holder, the licensee, or the certificate holder must satisfy any continuing education requirements that may be prescribed by the Board under subsection (b) of this ~~section; provided, however, that members~~ section. The members of the General Assembly are exempt from this requirement and any education program regarding trainee supervision during their term of office. The Board may adopt rules establishing a system of trainee registration, license, and certificate renewal in which trainee registrations, licenses, and certificates expire annually with varying expiration dates."

SECTION 18. G.S. 95-25.3(g) is repealed.

SECTION 19. G.S. 97-19.1, as amended by Section 1 of S.L. 2006-26, reads as rewritten:

"§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by ~~a governmental motor vehicle regulatory agency~~ the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor ~~that who is an individual licensed by a governmental motor vehicle regulatory agency~~ the United States Department of Transportation and (ii) the independent contractor personally is operating the vehicle solely pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 19.5.(a) G.S. 105-129.16D(b1), as enacted by S.L. 2006-66, reads as rewritten:

"(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of this section, a taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars (\$400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities. In order to claim the credit, the taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million dollars (\$400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service and the investment requirements of this subsection are no longer satisfied, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. If a credit allowed under this subsection expires, a taxpayer is not eligible for a credit under subsection (b) of this section with respect to the same property. Notwithstanding the provisions of ~~G.S. 105-129.17(a),~~ 105-129.17, a taxpayer may claim the credit allowed under this subsection against the income tax imposed under Article 4 of this Chapter ~~only, only and the taxpayer may carry forward unused portions of the credit allowed under this subsection for the succeeding 10 years.~~"

SECTION 19.5.(b) This section is effective for taxable years beginning on or after January 1, 2006.

SECTION 20. G.S. 105A-2(6) reads as rewritten:

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

...

- (6) Local agency. – Any of the following:
 - a. A county, to the extent it is not considered a State agency.
 - b. A municipality.
 - c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
 - d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
 - e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General ~~Statutes.~~ Statutes or other authorizing legislation.
 - f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
 - g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

...."

SECTION 20.5. If Senate Bill 1587, 2005 Regular Session, becomes law, then G.S. 113-174.3(a), as enacted by that act, reads as rewritten:

"(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. A For Hire Blanket CRFL authorizes all individuals on the for hire boat who do not hold a license issued under this Article or Article 25A of this Chapter to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. A For Hire Blanket CRFL does not authorize individuals to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

- (1) Two hundred fifty dollars (\$250.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to that will~~ carry six or fewer passengers.
- (2) Three hundred fifty dollars (\$350.00) for a vessel ~~captained by an individual who holds a certification from the United States Coast Guard to that will~~ carry greater than six passengers."

SECTION 21. G.S. 115D-20(3) reads as rewritten:

- "(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, and if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in General Statutes Chapter 40A. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive."

SECTION 22. G.S. 120-36.2 reads as rewritten:

"§ 120-36.2. Organization.

(a) The Legislative Services Commission shall ~~elect~~appoint a Director of Fiscal Research, who shall serve at the pleasure of the Commission. The Director of Fiscal Research shall be responsible to the Legislative Services Officer in the performance of his duties.

(b) The Director of Fiscal Research ~~shall appoint and may remove, after consultation with the Legislative Services Officer and subject in each case to the approval of the Commission, the professional and clerical employees of the Division. He shall~~ assign the duties and supervise and direct the activities of the employees of the Division.

(c) The Director and employees of the Division shall receive salaries that shall be fixed by the Commission, shall receive the travel and subsistence allowances fixed by G.S. 138-6 and 138-7, and shall be entitled to the other benefits available to State employees."

SECTION 23. G.S. 122C-142, as amended by S.L. 2006-142, reads as rewritten:

"§ 122C-142. Contract for services.

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority or county program may amend the contract to comply with any court-imposed duty or responsibility. An area authority or county program that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes

are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met."

SECTION 23.1.(a) G.S. 126-7.1 is amended by adding a new subsection to read:

"(f) Each State agency, department, institution, university, community college, and local education agency shall verify, in accordance with the Basic Pilot Program administered by the United States Department of Homeland Security pursuant to 8 U.S.C. § 1101, et seq, each individual's legal status or authorization to work in the United States after hiring the individual as an employee to work in the United States."

SECTION 23.1.(b) This section does not apply to persons under contract or subcontract. This section applies to employees hired on or after January 1, 2007, except that it applies to employees of local education agencies hired on or after March 1, 2007.

SECTION 24.(a) G.S. 128-1.1 is amended to add a new subsection to read:

"(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are authorized to hold any office or position with the applicable federal agency required to perform the described functions."

SECTION 24.(b) This section becomes effective January 1, 2006, and any actions taken between that date and the date this section becomes law that would have been proper if this section had been then in effect are in all respects validated and confirmed, and no office shall be considered to have been vacated.

SECTION 24.5. G.S. 143-143.21A(d) reads as rewritten:

"(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within seven business ~~days~~ days, or 15 business days when payment is by personal check, after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired."

SECTION 25. G.S. 143B-131.2 reads as rewritten:

"§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical

significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission shall have the following powers and duties:

- (1) To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the appearance, maintenance, and aesthetic quality of U.S. Highway 64/264 and the U.S. 64/264 Bypass and ~~N.C. 400 travel corridors~~ travel corridor on Roanoke Island and the grounds on Roanoke Island Festival Park.
- (2) To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.
- (3) To supervise the development of Ice Plant Island and to manage future facilities.
- (4) To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.
- (5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and rules.
- (6) To establish and collect a charge for admission to any property or event operated by the Commission.
- (7) To solicit and accept gifts, grants, and donations.
- (8) To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.
- (9) To adopt and enforce such bylaws, rules, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.
- (10) To establish and maintain a separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies. Funds appropriated to the Commission may be transferred to the Friends of Elizabeth II, Inc., a private, nonprofit corporation. The Friends of Elizabeth II, Inc., shall use the funds transferred to it to carry out the purposes of this Part.
- (11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.
- (12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.
- (13) To acquire real and personal property by purchase, gift, bequest, devise, and exchange.

- (14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.
- (15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services."

SECTION 26.(a) G.S. 153A-340(b)(2) reads as rewritten:

- "(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 26.(b) This section becomes effective January 1, 2007.

SECTION 27.(a) G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in ~~G.S. 143B-437A~~ G.S. 143B-437.01 for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~ G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 27.(b) G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in ~~G.S. 143B-437A~~ G.S. 143B-437.01, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The

local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 143B-437A~~G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration."

SECTION 28. G.S. 160A-383 reads as rewritten:

"Zoning regulations shall be made in accordance with a comprehensive plan. ~~Prior to~~When adopting or rejecting any zoning amendment, the governing board shall ~~adopt~~also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city."

SECTION 29.(a) G.S. 163-278.83 reads as rewritten:

"§ 163-278.83. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization-individual, committee, association, or any other organization or group of individuals~~ covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82."

SECTION 29.(b) G.S. 163-278.93 reads as rewritten:

"§ 163-278.93. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any ~~organization-individual, committee, association, or any other organization or group of individuals~~ covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to

violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92."

SECTION 29.(c) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.102 reads as rewritten:

"§ 163-278.102. Penalties.

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(d) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.112 reads as rewritten:

"§ 163-278.112. Penalties.

The State Board of Elections has the same authority to compel from any ~~organization~~ individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel ~~from a political committee~~ the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article."

SECTION 29.(e) If House Bill 966 of the 2005 Regular Session becomes law, G.S. 163-278.100(4) as enacted by that law reads as rewritten:

"(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and ~~2,500-7,500~~ or more individuals in the district in the case of a candidacy for General Assembly."

SECTION 30. Section 2.18 of S.L. 2004-158 reads as rewritten:

"SECTION 2.18.(a) Jack Olsen of Moore County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2007.~~December 31, 2006.

SECTION 2.18.(b) Effective January 1, 2005, Dumont Clarke of Mecklenburg County is appointed to the State Judicial Council for a term expiring on ~~December 31, 2009.~~December 31, 2008."

SECTION 31.(a) Section 3(c) of S.L. 2005-190 reads as rewritten:

"SECTION 3.(c) Nutrient management strategy. – The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July ~~2008-2009.~~ The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission

determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy."

SECTION 31.(b) Section 3(e) of S.L. 2005-190 reads as rewritten:

"SECTION 3.(e) Implementation; rulemaking. – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July ~~2008~~2009. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective."

SECTION 31.(c) Section 4 of S.L. 2005-190 reads as rewritten:

"SECTION 4. Other drinking water supply reservoirs. – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April ~~2006~~of each year beginning 1 April 2006."

SECTION 31.5. Section 13 of S.L. 2005-294 reads as rewritten:

"SECTION 13. Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 9, 10, and 11 of this act become effective July 1, ~~2009~~2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

SECTION 32. Section 2.3 of S.L. 2005-421 reads as rewritten:

"SECTION 2.3. Dr. Paul Rush of Scotland County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term expiring on June 30, ~~2008~~2007."

SECTION 33.(a) The lead-in language of Section 6 of S.L. 2006-6 reads as rewritten:

"SECTION 6. ~~G.S. 147-12(14)~~G.S. 147-12(a)(14) reads as rewritten:"

SECTION 33.(b) This section becomes effective June 6, 2006.

SECTION 33.5. S.L. 2006-66 is amended by inserting a new section to read:

"SECTION 17.7. G.S. 143B-394.4(4) reads as rewritten:

"(4) "Displaced homemaker" means an individual who:

- a. Has worked in his or her own household and has provided unpaid household services; and

- b. Is unable to secure gainful employment due to the lack of required training, age, or experience; or is unemployed, or underemployed; and
- c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support but is within two years of losing the support, or has been supported by public assistance as the parent of minor children ~~and is no longer eligible, but is no longer eligible, or is within two years of losing the eligibility.~~

SECTION 34. The introductory language of Section 3(o) of S.L. 2006-69 reads as rewritten:

"**SECTION 3.(o)** The catch line to Part 13A of Article 3 of Chapter 143B of the General Statutes reads as rewritten:".

SECTION 35. The title of S.L. 2006-85 is amended to read: "AN ACT TO PROVIDE MEMBERSHIP GUIDELINES FOR THE JACKSON COUNTY AIRPORT AUTHORITY AND TO PROVIDE FOR THE FILLING OF VACANCIES IN THE AIRPORT AUTHORITY."

SECTION 36. Section 1 of S.L. 2006-89 reads as rewritten:

"**SECTION 1.** The transfer of real property by the High Point Alcoholic Beverage Control Board located at Lot B of the property of The Mitchell Company as described in Book ~~5584~~, 5548, pages 0182 to 0184, per plats thereof recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2002, and 910 Greensboro Road, High Point, North Carolina, as described in Book 6389, pages 0107 to 0109 and recorded in the Office of the Register of Deeds for Guilford County, North Carolina, in 2005, shall not be deemed invalid for failure to follow the procedures for the sale of real property outlined in Article 12 of Chapter 160A."

SECTION 37. Section 4.1 of S.L. 2006-113 reads as rewritten:

"**SECTION 4.1.** Part III of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date. ~~This~~ The remainder of this act becomes effective December 1, 2006, and applies to actions commenced on or after that date."

SECTION 38. Section 3(a) of S.L. 2006-126 reads as rewritten:

"**SECTION 3.(a)** The maximum building height on any building within the corporate limits of the City of Hendersonville shall not exceed 64 feet. For purposes of this section, building height shall mean the vertical distance measured from the average grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. The height limitation created by this subsection does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy. No variance to this subsection may be granted. This subsection does not apply to hospitals, churches, cultural performing arts centers, government buildings, or buildings erected prior to the effective date of this section."

SECTION 39. If House Bill 767, 2005 Regular Session, becomes law, then G.S. 157-29(b), as amended by that act, reads as rewritten:

"(b) In the operation or management of housing projects, portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

- (1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and
- (2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.
- (3a) It shall comply with the following targeting requirements:
 - a. Not less than forty percent (40%) of the families admitted to its public housing program from its waiting list in its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income. For purposes of this section, this shall be known as the "basic targeting requirement".
 - b. To the extent provided in ~~subdivision (4a) of this subsection, sub-subdivisions c. and d. of this subdivision,~~ the admission of extremely low-income families to its ~~section 8~~ Section 8 voucher program during the same fiscal year shall be credited against the basic targeting requirement. For purposes of this section, ~~"section 8"~~ "Section 8" refers to ~~section 8~~ Section 8 of the U.S. Housing Act of 1937 as amended.
 - c. If admissions of extremely low-income families to its ~~section 8~~ Section 8 voucher program during its fiscal year ~~exceeds~~ exceed ~~the~~ the seventy-five percent (75%) ~~of the~~ minimum targeting requirement for its ~~section 8~~ Section 8 voucher program, the excess shall be credited against its basic targeting requirement for the same fiscal year.
 - d. The fiscal year credit for ~~section 8~~ Section 8 voucher program admissions that exceeded the minimum ~~section 8~~ Section 8 voucher program targeting requirement shall not exceed the lower of any of the following:
 - 1. Ten percent (10%) of its waiting list admissions during its fiscal year.
 - 2. Ten percent (10%) of waiting list admissions to its ~~section 8~~ Section 8 tenant-based assistance program during its fiscal year.
 - 3. The number of qualifying low-income families who, during the fiscal year, commence occupancy of its public housing units that are located in census tracts with a poverty rate of thirty percent (30%) or more. For purposes of this sub-sub-subdivision, qualifying low-income family means a low-income family other than an extremely low-income family.
- (4a) Its targeting requirement for tenant-based assistance shall ensure that not less than seventy-five percent (75%) of the families admitted to its tenant-based voucher program from its waiting list during its fiscal year shall be extremely low-income families with incomes at or below thirty percent (30%) of the area median income."

SECTION 40.(a) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C, as enacted by Section 9 of House Bill 914, are recodified as G.S. 143B-426.39D, 143B-426.39E, and 143B-426.39F. The Revisor of Statutes is authorized to change the references to G.S. 143B-426.39A, 143B-426.39B, and 143B-426.39C in G.S. 143B-426.39, 53-245(b), 62A-22(d), 96-6, 147-9.3, 174-9.4 as amended by Sections 8, 17, 19, 23, 112, and 113 of House Bill 914, to the correct recodified statutory references.

SECTION 40.(b) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g), made by Section 6.35 of S.L. 2005-276, is also made to G.S. 143B-426.39D(g), as enacted by Section 9 of House Bill 914 and recodified by Section 40(a) of this act.

SECTION 40.(c) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, G.S. 143B-426.39(6) reads as rewritten:

"(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with ~~G.S. 143-3.2 and G.S. 143-34.1~~, G.S. 143B-426.39E and G.S. 143C-6-6 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."

SECTION 40.(d) To reflect the provisions of G.S. 143-16.6 which was enacted in Section 34.1(d) of S.L. 2005-276, if House Bill 914, 2005 Regular Session becomes law, then effective July 1, 2007, Article 9 of Chapter 143C of the General Statutes, as enacted by Section 3 of House Bill 914, 2005 Regular Session, is amended by adding a new section to read:

"§ 143C-9-5. 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 40.(e) If a final judgment by a court of competent jurisdiction declares that G.S. 143C-9-5, as enacted by subsection (d) of 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. 143C-9-5, as enacted by

subsection (d) of 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. 143C-9-5 is repealed, and any assignment made under it is void.

SECTION 40.(f) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, Article 9 of Chapter 143C, as enacted by Section 3 of House Bill 914, 2005 Regular Session, is amended by adding a new section to read:

"§ 143C-9-6. JDIG Reserve Fund.

(a) The State Controller shall establish a reserve in the General Fund to be known as the JDIG Reserve. Funds from the JDIG Reserve shall not be expended or transferred except in accordance with G.S. 143B-437.63.

(b) It is the intent of the General Assembly to appropriate funds annually to the JDIG Reserve established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year of the Job Development Investment Grant Program established pursuant to G.S. 143B-437.52."

SECTION 40.(g) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-3-1, as enacted by Section 2 of House Bill 914, 2005 Regular Session, reads as rewritten:

"§ 143C-3-1. Budget estimate for the legislative branch.

The Legislative ~~Administrative-Services~~ Officer shall give the Director an estimate of the financial needs of the legislative branch for the upcoming fiscal period in accordance with the schedule prescribed by the Director. The estimates for the legislative branch shall be approved and certified by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The estimates shall be itemized in accordance with the accounting classifications adopted by the Controller. The Director shall include the estimates in the budget the Director submits to the General Assembly. The Director may recommend changes to these estimates in the budget submitted to the General Assembly."

SECTION 40.(h) If House Bill 914, 2005 Regular Session, becomes law, then effective July 1, 2007, G.S. 143C-1-1(b), as enacted by Section 2 of House Bill 914, 2005 Regular Session, reads as rewritten:

"(b) The provisions of this Chapter shall apply to every State agency and to every non-State entity that receives or expends any State funds. No State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of this Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply to the General Assembly and to control its expenditures and in the event of a conflict with this Chapter, the provisions of Chapter 120 of the General Statutes shall control. Nothing in this Chapter abrogates or diminishes the inherent power of the legislative, executive, or judicial branch."

SECTION 40.(i) If Senate Bill 198, 2005 Regular Session, becomes law, this section is repealed.

SECTION 40.5. If House Bill 914 and Senate Bill 198, 2005 Regular Session become law, then (i) G.S. 143C-9-3A as enacted by Section 6.19(d) of S.L. 2006-66 as enacted by Section 3A of Senate Bill 198 is recodified as G.S. 143C-9-5, (ii) Section 6.19(e) of S.L. 2006-66 as enacted by Section 3A of Senate Bill 198 is amended by deleting "143C-9-3A" whenever it appears and inserting "143C-9-5", (iii) Section 6.19(e) of S.L. 2006-66 as enacted by Section 3A of Senate Bill 198 is amended by deleting "subsection (b)" and substituting "subsection (d)", and (iv) G.S. 143C-3B as

enacted by Section 6.19(f) of S.L. 2006-66, as enacted by Section 3A of Senate Bill 198 is recodified as G.S. 143C-9-6.

SECTION 41. If House Bill 1231, 2005 Regular Session, becomes law, then G.S. 75-38(d), as enacted by House Bill 1231, reads as rewritten:

"(d) A "triggering event" means the declaration of a state of emergency pursuant to ~~G.S. 166A-8, 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to Article 36A of Chapter 14 of the General Statutes,~~ G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e)."

SECTION 42. If House Bill 1327, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, is recodified as G.S. 114-19.18. If House Bill 1848, 2005 Regular Session, becomes law, then G.S. 114-19.16, as enacted by that act, is recodified as G.S. 114-19.19.

SECTION 43. If both House Bill 1827 and House Bill 2882, 2005 Regular Session, become law, then Section 3 of House Bill 1827 is repealed.

SECTION 43.5.(a) If House Bill 1843, 2005 Regular Session, becomes law, then the following provisions of Article 6 of Chapter 120C of the General Statutes, as enacted by Section 18 of House Bill 1843, are amended as follows:

- (1) G.S. 120C-600(a) is amended in the second sentence by deleting "Article 4 or Article 8" and substituting "Articles 2, 4, or 8".
- (2) G.S. 120C-600(b) is amended in the first sentence by deleting "Articles 4 and 8" and substituting "Articles 2, 4, and 8" and in the second sentence by deleting "Articles 4 and 8" and substituting "Articles 2, 4, and 8".
- (3) G.S. 120C-600(c) is amended by deleting "Articles 4 and 8" and substituting "Articles 2, 4, and 8".
- (4) G.S. 120C-601(a) is amended by deleting "Article 4 or Article 8" and substituting "Articles 2, 4, or 8".
- (5) G.S. 120C-602(b) is amended in the first sentence by deleting "Article 4 or 8" and substituting "Articles 2, 4, or 8" and in the second sentence by deleting "Article 4 or Article 8" and substituting "Article 2, 4, or 8".

SECTION 43.5.(b) If House Bill 1843, 2005 Regular Session, becomes law then G.S. 120C-603(a) as enacted by that act reads as rewritten:

"(a) The Commission ~~or the Secretary of State, as appropriate,~~ may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person who violates any provisions of this Chapter."

SECTION 43.5.(c) This section becomes effective January 1, 2007.

SECTION 44.(a) If House Bill 1848, 2005 Regular Session, becomes law, Section 4 of S.L. 2006-32 as amended by Section 8 of House Bill 1848 reads as rewritten:

"SECTION 4. The Legislative Research Commission ~~and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOG)~~ shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

- (1) Funding mechanisms;
- (2) Target populations;
- (3) Interagency collaboration at the State and local levels; and

- (4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The Commission may report its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 44.(b) If House Bill 1848, 2005 Regular Session, becomes law, Section 12 of the bill reads as rewritten:

"**SECTION 12.** In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

- (1) The initial terms of the new district court ~~judge~~~~judge, and~~ of one new member of the North Carolina ~~Bar~~~~Bar, and of one citizen upon recommendation of the Speaker of the House of Representatives,~~ appointed to the Commission effective January 1, 2007, shall be ~~three~~two-year terms.
- (2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be ~~six~~five-year terms.
- (3) ~~The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three year term.~~
- (4) ~~The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three year term."~~

SECTION 45.(a) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-245(17) reads as rewritten:

- "(17) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes:
- a. An insurance company;
 - b. A hospital or medical service corporation;
 - c. A health maintenance organization;
 - d. A multiple employer welfare arrangement;
 - e. A third-party administrator or claims processor;
 - f. An administrative service organization; and
 - g. Any other nongovernmental entity providing a health benefit plan subject to State insurance ~~regulation; and~~ regulation."

SECTION 45.(b) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-250(b)(2) reads as rewritten:

- "(2) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed by the General Assembly, as follows:
- a. One member upon the recommendation of the President Pro Tempore of the Senate.
 - b. One member upon the recommendation of the Speaker of the House of Representatives."

SECTION 45.(c) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-255(a) reads as rewritten:

"(a) The Executive Director, in collaboration with the Board, shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Executive Director shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

- (1) Proven ability to handle health insurance coverage to individuals.
- (2) Efficiency and timeliness of the claim processing procedures.
- (3) Estimated total charges for administering the Pool.
- (4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.
- (5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator."

SECTION 45.(d) If House Bill 1895, 2005 Regular Session, becomes law, then G.S. 58-50-300 reads as rewritten:

"§ 58-50-300. Audit.

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the ~~Special~~ Reserve for the North Carolina Health Insurance Risk Pool."

SECTION 47. If House Bill 1965, 2005 Regular Session, becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006.

SECTION 47.5. If House Bill 2170, 2005 Regular Session, becomes law, then the lead-in language of Section 2.23 of that act reads as rewritten:

'SECTION 2.23. G.S. 105-129.71(a), as enacted by S.L. 2006-40, reads as rewritten:' "

SECTION 48.(a) G.S. 163-127.1, as enacted by Section 1 of S.L. 2006-155, reads as rewritten:

"§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

- (1) Board. – State Board of Elections.
- (2) Candidate. – A person having filed a notice of candidacy under ~~Article 10 of Chapter 163 of the General Statutes or having filed a petition under Article 11 of Chapter 163 of the General Statutes~~ the appropriate statute for any elective office in this State.
- (3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.
- (4) Office. – The elected office for which the candidate has filed or petitioned."

SECTION 48.(b) This section becomes effective on January 1, 2007.

SECTION 49. If House Bill 2762, 2005 Regular Session, becomes law, then G.S. 166-5(c1)(26), as enacted by that act, is recodified as G.S. 126-5(c1)(27).

SECTION 50.(a) If House Bill 2873, 2005 Regular Session, becomes law then G.S. 87-88(i), as amended by Section 3 of House Bill 2873, reads as rewritten:

"(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for human consumption ~~and all private drinking water wells~~ shall be

sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service."

SECTION 50.(b) If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97, as enacted by Section 4 of House Bill 2873, is amended by adding a new subsection to read:

"(f1) Chlorination of the Well. – Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service."

SECTION 50.(c) If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97(g), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion."

SECTION 51. If House Bill 2873, 2005 Regular Session, becomes law, then G.S. 87-97(h), as enacted by Section 4 of House Bill 2873, reads as rewritten:

"(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the ~~well~~ well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Health Services. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators."

SECTION 52.(a) If Senate Bill 602, 2005 Regular Session, becomes law, then G.S. 47-14(a), as amended by Section 40(c) of that bill, reads as rewritten:

"(a) The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, (iii) the legal sufficiency of any document presented for registration, or (iv) upon presentation of the original document for re-recording, whether the original document has been changed or altered."

SECTION 52.(b) If Senate Bill 602, 2005 Regular Session, becomes law, then Section 40.(d), as enacted in the bill, reads as rewritten:

"**SECTION 40.(d)** Subsection (a) of this section becomes effective October 1, 2006. This The remainder of this section becomes effective October 1, 2005."

SECTION 53. If Senate Bill 951 of the 2005 Regular Session becomes law, then G.S. 160A-49.3(a2), as enacted by that act, reads as rewritten:

"(a2) Firms shall ~~fill~~file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof."

SECTION 54.(a) If Senate Bill 2009, 2005 Regular Session, becomes law, then G.S. 115C-531(i), as enacted by Senate Bill 2009, reads as rewritten:

"(i) Lien Laws Not Affected. – ~~The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity. All laws relating to liens on private property apply to private property interests in a capital lease project undertaken under this section.~~"

SECTION 54.(b) If Senate Bill 2009, 2005 Regular Session, becomes law, then G.S.115C-532(d) , as enacted by Senate Bill 2009, reads as rewritten:

"(d) Additional Requirements Regarding Design Services. – All architectural, engineering, and survey services shall be procured in accordance with the provisions of Article 3D of Chapter 143 of the General Statutes. Required design and engineering services shall be performed by an engineer, to the extent permitted under G.S. 83A-13(b),engineer or a licensed architect.architect, to the extent permitted under G.S. 83A-13(b). Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section."

SECTION 55. The Enrolling Clerk may file with the Secretary of State a corrected copy of Resolution 2006-10, changing the name "Hernadez" to "Hernandez", and may correct the copies in the legislative database.

PART III. EFFECTIVE DATE

SECTION 56. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 7:02 p.m. on the 23rd day of August, 2006.

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ISSUE SPECIAL DIPLOMAS TO QUALIFIED VETERANS OF KOREA AND VIETNAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 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:

...

- (29) To issue special high school diplomas to veterans of ~~World War II.~~ World War II, Korea, and Vietnam. – The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of ~~World War II~~ World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas."

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 2006.

Became law upon approval of the Governor at 11:47 a.m. on the 24th day of August, 2006.

H.B. 1827

Session Law 2006-261

AN ACT TO EXEMPT CERTAIN DEPARTMENT OF TRANSPORTATION CONTRACTORS FROM THE REQUIREMENT FOR A GENERAL CONTRACTOR'S LICENSE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE, TO CLARIFY A GENERAL CONTRACTING EXCEPTION, AND TO REAFFIRM AND CLARIFY STATE POLICY CONCERNING PARTICIPATION BY DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES IN HIGHWAY CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-28.14. **Project contractor licensing requirements.**

The letting of contracts under this Chapter for the following types of projects shall not be subject to the licensing requirements of Article 1 of Chapter 87 of the General Statutes:

- (1) Routine maintenance and minor repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas.
- (2) Installation and maintenance of pavement markings and markers, ground mounted signs, guardrail, fencing, and roadside vegetation and plantings."

SECTION 2. Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-1.2. Exception for specified Department of Transportation contractors.

The letting of contracts for the types of projects specified in G.S. 136-28.14 shall not be subject to the licensing requirement of this Article."

SECTION 3. G.S. 87-1.1 reads as rewritten:

"§ 87-1.1. Exception for licensees under Article 2 or 4.

G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the General Statutes. Statutes, G.S. 87-43 shall not apply to a licensee under Article 2 of this Chapter of the General Statutes, and G.S. 87-21(a)(5) shall not apply to a licensee under Article 4 of this Chapter of the General Statutes when the licensee is bidding and contracting directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the State Licensing Board of General Contractor's rules; and (ii) the total amount of the general contracting work so classified does not exceed a percentage of the total bid price pursuant to rules established by the Board; and (iii) a licensee with the appropriate license under Article 2 or Article 4 of this Chapter performs all work that falls within the classifications in Article 2 and Article 4 of this Chapter."

SECTION 4. G.S. 136-28.4 reads as rewritten:

"§ 136-28.4. State policy concerning participation by ~~disadvantaged~~ disadvantaged minority-owned and women-owned businesses in highway contracts.

(a) It is the policy of this State-State, based on a compelling governmental interest, to encourage and promote participation by ~~disadvantaged~~ disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and all other State agencies, institutions, and political subdivisions among themselves in all efforts to conduct outreach and to encourage and promote the use of ~~disadvantaged~~ disadvantaged minority-owned and women-owned businesses in these contracts.

(b) A ten percent (10%) goal is established for participation by minority businesses and a five percent (5%) goal for participation by women businesses is established in contracts let by the Department of Transportation for the design, construction, alteration, or maintenance of State highways, roads, streets, or bridges and for the procurement of materials for these projects. The Department of Transportation shall endeavor to award to minority businesses at least ten percent (10%), by value, of the contracts it lets for these purposes, and shall endeavor to award to women businesses at least five percent (5%), by value, of the contracts it lets for these purposes. The Department shall adopt written procedures specifying the steps it will take to achieve these goals. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified. At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State highways, roads, streets, or bridges and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and

women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in highway contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) Based upon the findings of the Department's Second Generation Disparity Study completed in 2004, hereinafter referred to as 'Study', the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish annual aspirational goals, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These annual aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with methodology specified in the Study, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:

- (1) "Disadvantaged business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 23.62-26.5 or any subsequently promulgated replacement regulation.
- (2) "Minority" has the same meaning as in 49 C.F.R. § 23.5, includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

(d) The Department shall report semiannually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of

availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, 2009."

SECTION 5. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 30.

"Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

"§ 120-270. Commission established.

There is established the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program.

"§ 120-271. Membership; terms.

(a) Membership. – The Commission shall be composed of 12 members as follows:

- (1) Five members of the House of Representatives appointed by the Speaker of the House.
- (2) Five members of the Senate appointed by the President Pro Tempore of the Senate.
- (3) The Senate and House cochair of the Joint Legislative Transportation Oversight Committee, or their designees, shall serve as ex officio members.

(b) Terms. – Members of the Commission shall serve two-year terms, beginning July 1 of each odd-numbered year. Members shall serve at the pleasure of the appointing authority. Members may complete a term of service on the Commission even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from the Commission.

(c) Vacancies. – Vacancies on the Commission shall be filled by the appointing authority.

"§ 120-271. Duties of the Commission.

The Commission shall:

- (1) Monitor the implementation, and assess and evaluate the effectiveness, of the Department of Transportation program under G.S. 136-28.4.
- (2) Review the strategies the Department of Transportation plans to use to implement the requirements of G.S. 136-28.4.
- (3) Develop recommendations for submittal to the Department of Transportation or the General Assembly to improve the program under G.S. 136-28.4.

"§ 120-272. Department of Transportation reporting.

The Department of Transportation shall report quarterly to the Commission on the status of the program under G.S. 136-28.4 and efforts made to achieve the goals of the program.

"§ 120-273. Organization of Commission.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Businesses Program. The Commission shall meet upon the joint call of the cochairs.

(b) A quorum of the Commission is seven members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Commission has the powers of a joint commission under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Commission receive subsistence and travel expenses as provided in G.S. 120-3.1. The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission."

SECTION 6. The provisions of this act are severable. In the event that any provision of this act shall be declared invalid, that invalidity shall not affect the remaining provisions of this act.

SECTION 7. This act is effective when it becomes law. Section 5 of this act expires June 30, 2015.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 1:10 p.m. on the 27th day of August, 2006.

H.B. 128

Session Law 2006-262

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES; TO CLARIFY HOW A VOTER SHALL REPORT A MOVE; TO CLARIFY THE RESIDENCE FOR VOTING PURPOSES OF CERTAIN PERSONS; TO AMEND THE STATUTES RELATING TO CHALLENGES; TO SPECIFY HOW FINANCIAL INSTITUTIONS MAY MAKE LOANS WITHOUT VIOLATING THE PROHIBITION ON CORPORATE CONTRIBUTIONS; TO MAKE CHANGES TO THE APPROPRIATIONS ACT AS IT RELATES TO ELECTIONS APPOINTMENTS; TO CLARIFY WHAT REASONABLE ADMINISTRATIVE EXPENSES INCLUDE; AND TO PROVIDE THAT EXCEPT FOR THEIR ENVELOPE, PROVISIONAL BALLOTS SHALL NOT BE MARKED TO BE IDENTIFIABLE TO A VOTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 is amended by adding a new subdivision to read:

"(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members

of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots."

SECTION 2. G.S. 163-82.15(a) reads as rewritten:

"(a) Registrant's Duty to Report. – No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163-82.6(c). In addition to any other method allowed by G.S. 163-82.6, the form may be submitted by electronic facsimile, under the same deadlines as if it had been submitted in person. The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and date of moving the registrant's attestation that the registrant moved at least 30 days before the next primary or election from the old to the new address."

SECTION 2.1. G.S. 163-57(1) reads as rewritten:

- "(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.
- a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.
 - b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.
 - c. In the event that a person's residence is not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."

SECTION 3.(a) G.S. 163-87 reads as rewritten:

"§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. ~~163-85(c), or~~ 163-85(c).

- (2) That the person has already voted in that primary or ~~election, or election.~~
- (3) That the person presenting himself to vote is not who he represents himself to be.
- (4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

~~On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).~~

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred.

SECTION 3.(b) G.S. 163-90.2 reads as rewritten:

"§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel or correct the voter registration of the voter and ~~shall remove his card from the book, but~~ voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163-166.11(4).

~~(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the ground that the voter is not affiliated with the political party shown on his registration record, the board shall change the voter's party affiliation to "unaffiliated."~~

(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal."

SECTION 4. G.S. 163-165(6) reads as rewritten:

"(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter."

SECTION 4.1.(a) G.S. 163-278.19(a) reads as rewritten:

"(a) Except as provided in subsections ~~(a2)~~, (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

- (1) To make any contribution to a candidate or political committee ~~(except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business)~~ or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;
- (2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or
- (3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof."

SECTION 4.1.(b) G.S. 163-278.19 is amended by adding a new subsection to read:

"(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business."

SECTION 4.1.(c) G.S. 163-278.15 reads as rewritten:

"§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic.

(a) No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f).

(b) A candidate or political committee may accept a contribution knowing that the contribution is the proceeds of a loan made in the ordinary course of business by a financial institution if all of the following conditions are met:

- (1) The full amount of the loan is secured by collateral placed, or by guaranties given, by one or more individuals or entities who are not prohibited by this Article from making contributions to the candidate

or political committee. The value of the collateral posted by each individual or entity, or the amount of each guaranty, may not exceed the contribution limitations applicable under this Article to each individual or entity. The value of collateral posted may exceed the contribution limitations applicable under this Article in cases where the amount of the loan secured by that collateral does not exceed the contribution limitations applicable to the individual or entity.

- (2) During the time that any loan remains outstanding and unpaid, then the value of any collateral posted, or the amount of each guaranty, for that loan shall be considered to be a contribution by the individual or entity securing the loan. If the loan, or any portion of the loan, is repaid to the financial institution by the candidate or political committee to whom the loan was made during the contribution limitation period for the same "election" as defined in G.S. 163-278.13(d) in which the loan was made, the individual or entity securing the loan shall be eligible to further contribute to that candidate or political committee up to the amount of the repayment. If multiple individuals or entities secured the loan that is repaid to the financial institution by the candidate or political committee, then the amount repaid shall be prorated amongst the multiple individuals or entities.
- (3) If the loan is to the candidate or political committee, only the candidate, the candidate's spouse, or the political committee to whom the loan was made may repay the loan.

The State Board of Elections shall develop forms for reporting the proceeds of loans in a full and accurate manner."

SECTION 4.2. Section 23A.3 of S.L. 2005-276 is repealed.

SECTION 4.3. G.S. 163-278.19(e) reads as rewritten:

"(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include include, but not be limited to, record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any ~~record keeping, computer services, billings, mailings, office supplies, and office space provided on a continuing basis~~ reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on

the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes."

SECTION 5. Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 1:12 p.m. on the 27th day of August, 2006.

H.B. 1417

Session Law 2006-263

AN ACT RELATING TO REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 158 of the General Statutes is amended by adding the following new sections to read:

"§ 158-8.5. Annual reporting requirement.

By February 15 of each year, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall publish a report containing the information required by this section. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Regional Partnership, and the Research Triangle Regional Partnership shall, by February 15 of each year, publish a report containing the information required by this section. The commissions and partnerships shall also submit a copy of the report to the Department of Commerce, the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development Oversight Committee, and the Fiscal Research Division of the General Assembly. The report shall include all of the following:

- (1) A summary of the preceding year's program activities, objectives, and accomplishments.
- (2) The preceding fiscal year's itemized expenditures of State funds.
- (3) A demonstration of how the commission's or partnership's regional economic development and marketing strategy aligns with the State's overall economic development and marketing strategies.
- (4) A demonstration of how the commission's or partnership's involvement in promotion activities has generated leads.
- (5) The most recent audited annual financial statement regarding State funds.

"§ 158-8.6. Uniform standards.

The Department of Commerce, in consultation with the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional

Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall develop uniform standards for the use of State funds related to accounting procedures, personnel practices, and purchasing and contracts procedures. The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall follow these standards. As a condition on the receipt of State funds, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership shall follow these standards.

"§ 158-8.7. Use of State funds.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, are subject to all of the provisions of G.S. 143-6.2.

"§ 158-8.8. Orientation for board members.

The commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33 shall hold an orientation session for all newly appointed commission members. The orientation shall provide information on the duties and responsibilities of commission members and shall include information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior. At least once a year, each of these commissions shall distribute to all commission members information on the commission's policies and State law regarding conflicts of interest, financial disclosure, and ethical behavior."

SECTION 2. The Department of Commerce may hire a consultant to assist in the development of the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act. As a condition on the receipt of State funds, the commissions created pursuant to G.S. 158-8.1, 158-8.2, 158-8.3, and 158-33, the Charlotte Regional Partnership, Inc., the Piedmont Triad Partnership, and the Research Triangle Regional Partnership, shall pay the costs of developing the uniform standards required by G.S. 158-8.6, as enacted by Section 1 of this act, in equal shares up to a maximum aggregate amount of fifty thousand dollars (\$50,000). The Department of Commerce shall pay from funds available in its 2006-2007 budget any costs for developing the uniform standards in excess of fifty thousand dollars (\$50,000).

SECTION 3. Section 1 of this act becomes effective October 1, 2006. The remainder of this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 1:15 p.m. on the 27th day of August, 2006.

S.B. 602

Session Law 2006-264

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CHANGES RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1.(a) G.S. 7A-775(a)(4) reads as rewritten:

"(4) Arranging for an annual audit, in accordance with ~~G.S. 143-6.1;G.S. 143-6.2;~~".

SECTION 1.(b) G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars (\$100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be audited as required by ~~G.S. 143-6.1.G.S. 143-6.2.~~ Organizations subject to G.S. 159-34 shall be exempt from this requirement."

SECTION 1.(c) If House Bill 914, 2005 Regular Session, becomes law, this section is repealed.

SECTION 2. G.S. 14-226(b) reads as rewritten:

"(b) A defendant in a criminal proceeding who threatens a witness in the defendant's case with the assertion or denial of parental rights shall be ~~a~~in violation of this section."

SECTION 3.(a) G.S. 14-309.15(a) reads as rewritten:

"(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling"."

SECTION 3.(b) Section 2 of Chapter 219 of the 1993 Session Laws is repealed.

SECTION 4. The introductory language for Section 1 of S.L. 2006-39 reads as rewritten:

"**SECTION 1.** ~~G.S. 14-404(a)(1)~~G.S. 14-404(a) reads as rewritten:".

SECTION 5. G.S. 14-407.1 reads as rewritten:

"§ 14-407.1. **Sale of blank cartridge pistols.**

The provisions of ~~G.S. 14-402 and 14-405 to 14-407~~ G.S. 14-402, 14-405, and 14-406 shall apply to the sale of pistols suitable for firing blank cartridges. ~~The clerks of the superior courts~~ sheriffs of all the counties of this State are authorized and may in their discretion issue to any person, firm or corporation, in any such county, a license or permit to purchase or receive any pistol suitable for firing blank cartridges from any person, firm or corporation offering to sell or dispose of the same, which said permit shall be in substantially the following form:

North Carolina

_____ County

I, _____, ~~Clerk of the Superior Court~~ sheriff of said county, do hereby certify that _____, whose place of residence is _____ Street in _____ (or) in _____ Township in _____ County, North Carolina, having this day satisfied me that the possession of a pistol suitable for

firing blank cartridges will be used only for lawful purposes, a permit is therefore given said _____ to purchase said pistol from any person, firm or corporation authorized to dispose of the same, this _____ day of _____, _____.

Clerk of Superior Court Sheriff

The ~~clerk~~ sheriff shall charge for ~~his~~ the sheriff's services, upon issuing such permit, a fee of fifty cents (50¢)."

SECTION 6. G.S. 20-158(b)(2) reads as rewritten:

"(2) ~~Approaching with traffic signal traffic signal the approaching~~

- a. When a ~~steady or strobe beam stoplight~~ steady-beam traffic signal is emitting a red light controlling traffic ~~passing through~~ approaching an intersection, an approaching vehicle facing the red light shall come to a stop and shall not enter the intersection. After coming to a complete stop and unless prohibited by an appropriate sign, that approaching vehicle may make a right turn.
- b. Any vehicle that turns right under this subdivision shall yield the right-of-way to:
 1. Other traffic and pedestrians using the intersection; and
 2. Pedestrians who are moving towards the intersection, who are in reasonably close proximity to the intersection, and who are preparing to cross in front of the traffic that is required to stop at the red light.
- c. Failure to yield to a pedestrian under this subdivision shall be an infraction, and the court may assess a penalty of not more than five hundred dollars (\$500.00) and not less than one hundred dollars (\$100.00).
- d. The Department of Transportation shall collect data regarding the number of individuals who are found responsible for violations of sub-subdivision b. of this subdivision and the number of pedestrians who are involved in accidents at intersections because of a driver's failure to yield the right-of-way while turning right at a red light. The data shall include information regarding the number of disabled pedestrians, including individuals with visual or mobility-related disabilities, who are involved in right turn on red accidents. The Department shall report the data annually to the Joint Legislative Transportation Oversight Committee beginning January 1, 2006."

SECTION 7. G.S. 58-31-66(b) reads as rewritten:

"(b) (1) Repealed by Session Laws 2004-203, s. 74(b), effective October 1, 2004.

(2) ~~because~~".

SECTION 8. G.S. 66-58(b)(13a) is repealed.

SECTION 9. G.S. 95-265(a)(2)b. reads as rewritten:

- "b. The complainant certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would ~~like~~ likely occur if the respondent

were given any prior notice of the complainant's efforts to obtain judicial relief."

SECTION 10. G.S. 120-231(b) reads as rewritten:

"(b) The Committee may consult with the State Chief Information Officer on statewide technology strategies and initiatives and review all legislative proposals and other recommendations of the State Chief Information Officer.

~~Office of Information Technology Services".~~

SECTION 11. G.S. 126-5(e) reads as rewritten:

"(e) An exempt employee may be transferred, demoted, or separated from his or her position by the department head authorized to designate the exempt position except:

- (1) When an employee who has the minimum service requirements described in ~~subsection (c)(1) above~~ G.S. 126-1.1 but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or
- (2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position."

SECTION 12. G.S. 126-14.4(g) reads as rewritten:

"(g) A career State employee with:

- (1) Less than 10 years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be given priority consideration for a position at the same salary grade equal to that held in the most recent position ~~prior to the promotion before being placed in the exempt managerial position~~ if he or she has to vacate because of violation of G.S. 126-14.2.
- (2) 10 or more years of service who was placed in an exempt managerial position, as defined by G.S. 126-5(b)(2), shall be placed in a comparable position at the same grade and salary equal to that held in the most recent position ~~prior to the promotion before being placed in the exempt managerial position~~ if he or she had to vacate because of violation of G.S. 126-14.2."

SECTION 13. G.S. 126-15.1 reads as rewritten:

"§ 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by ~~G.S. 126-5(c)~~ G.S. 126-1.1."

SECTION 14. G.S. 135-4A is recodified as G.S. 135-4.1.

SECTION 15. G.S. 143B-405 reads as rewritten:**"§ 143B-405. North Carolina State Commission of Indian Affairs – purposes for creation.**

~~The purposes of the Commission shall be~~ The purposes of the Commission shall be as follows:

- (1) To deal fairly and effectively with Indian affairs.
- (2) To bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina.
- (3) To provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships.
- (4) To hold land in trust for the benefit of State-recognized Indian tribes. This subdivision shall not apply to federally recognized Indian tribes.
- (5) To assist Indian communities in social and economic development.
- (6) To promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans."

SECTION 16. G.S. 153A-129 reads as rewritten:**"§ 153A-129. Firearms.**

A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter ~~III~~IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A."

SECTION 17.(a) G.S. 160A-37(f1) reads as rewritten:

"(f1) Property Subject to Present-Use Value Appraisal. – If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that meets either of the conditions listed below on the effective date of annexation, then the annexation becomes effective as to that property pursuant to subsection (f2) of this section:

- (1) ~~Land that~~ The land is being taxed at present-use value pursuant to G.S. 105-277.4.
- (2) ~~Land that~~ The land meets both of the following conditions:
 - a. On the date of the resolution of intent for annexation it was being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land ~~has~~had not been in use for actual production for the required time under G.S. 105-277.3.
 - b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision."

SECTION 17.(b) G.S. 160A-37(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section becomes effective as provided in this ~~subsection~~subsection:

- (1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city

- boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.
- (2) For all other purposes, the annexation becomes effective as to each tract of the property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 17.(c) G.S. 160A-37(h) reads as rewritten:

"(h) Remedies for Failure to Provide Services. – If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and ~~160A-37(e)~~, such subsection (e) of this section, the person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of ~~G.S. 160A-35(3)e~~ G.S. 160A-35(3)b, require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality."

SECTION 18.(a) G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

- (1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.
- (2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the

city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 18.(b) If House Bill 1963, 2005 Regular Session, becomes law, this section is repealed.

SECTION 19. G.S. 160A-215(g), as amended by S.L. 2005-16, S.L. 2005-46, S.L. 2005-49, S.L. 2005-220, and S.L. 2005-233, reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Jonesville, Kure Beach, ~~Jonesville~~,— Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 20. G.S. 163-128(a) reads as rewritten:

"(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the ~~Secretary-Director~~ Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place."

SECTION 21. G.S. 163-296 reads as rewritten:

"§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of

the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office."

SECTION 22.(a) Section 18.2(e) of S.L. 2004-124 reads as rewritten:

"**SECTION 18.2.(e).** ~~The~~ With the exception of G.S. 143-655, the word "Commission" shall be replaced with "Division" every place that word appears in Article 68 of Chapter 143 of the General Statutes."

SECTION 22.(b) G.S. 143-655 reads as rewritten:

"§ 143-655. **Fees; State Boxing ~~Commission~~ Revenue Account.**

(a) License Fees. – The ~~Commission~~ Division shall collect the following license fees:

Announcer	\$50.00
Contestant	\$25.00
Judge	\$50.00
Manager	\$100.00
Matchmaker	\$200.00
Promoter	\$300.00
Referee	\$50.00
Timekeeper	\$50.00
Second	\$25.00.

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. – The ~~Commission~~ Division may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

Seating Capacity	Fee Amount
Less than 2,000	\$100.00
2,000 – 5,000	\$200.00
Over 5,000	\$300.00.

(c) State Boxing ~~Commission~~ Revenue Account. – There is created the State Boxing ~~Commission~~ Revenue Account within the Department of Crime Control and Public Safety. Monies [moneys] collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

SECTION 22.(c) G.S. 143-651(23b) reads as rewritten:

"(23b) Sanctioned amateur match. – Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the Division.

~~North Carolina Boxing Commission."~~

SECTION 23. The introductory language of Section 15 of S.L. 2004-127 reads as rewritten:

"**SECTION 15.** ~~G.S. 163-278(9)~~ G.S. 163-278.6(9) reads as rewritten:".

SECTION 24. The introductory language of Section 27(e) of S.L. 2004-199 reads as rewritten:

"**SECTION 27.(e)** ~~G.S. 106-577~~ G.S. 106-557 reads as rewritten:".

SECTION 25. Section 44 of S.L. 2004-203 is repealed.

SECTION 26. Section 68 of S.L. 2004-203 is repealed.

SECTION 27. The introductory language of Section 1 of S.L. 2005-5 reads as rewritten:

"**SECTION 1.** Section 6 of Chapter 1191 of the 1957 Session Laws, as amended by Section 2 of Chapter 292 of the 1985 Session Laws, reads as rewritten:".

PART II. OTHER CHANGES

SECTION 29.(a) G.S. 7A-177(a) reads as rewritten:

"(a) Within six months of taking the oath of office as a magistrate for the first time, a magistrate is required to attend and satisfactorily complete a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate. The Administrative Office of the Courts is authorized to contract with the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training, and to reimburse magistrates for travel and subsistence expenses incurred in taking such training."

SECTION 29.(b) G.S. 7A-413(a)(4) reads as rewritten:

"(a) The Conference may:

...

- (4) Cooperate with the Administrative Office of the Courts and the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill concerning education and training programs for prosecutors and staff."

SECTION 29.(c) G.S. 17C-3(a)(5) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission." The Commission shall be composed of 33 members as follows:

...

- (5) Citizens and Others. – The President of The University of North Carolina; the ~~Director of the Institute of Government~~; Dean of the School of Government at the University of North Carolina at Chapel Hill; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint four persons, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall be for two-year terms to conclude on June 30th in odd-numbered years.

...."

SECTION 29.(d) G.S. 17C-3(b) reads as rewritten:

"(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July

1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; three members from subdivision (2) of subsection (a) of this section, one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a) of this section, appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a) of this section, one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a) of this section, serving as a police chief; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and two members from subdivision (4) of subsection (a) of this section, one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a) of this section, one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a) of this section, serving as a police official; and three members from subdivision (4) of subsection (a) of this section, one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of Crime Control and Public Safety, the Secretary of Correction, the President of The University of North Carolina, the ~~Director of the Institute of Government~~, Dean of the School of Government at the University of North Carolina at Chapel Hill, the President of the North Carolina Community Colleges System, and the Secretary of Juvenile Justice and Delinquency Prevention shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

SECTION 29.(e) G.S. 17E-3(a)(4) reads as rewritten:

"(a) There is hereby established the North Carolina Sheriffs' Education and Training Standards Commission. The Commission shall be composed of 17 members as follows:

...

- (4) Others. – The President of the ~~Department of Community Colleges System~~ or ~~his~~ the President's designee and the ~~Director of the Institute of Government~~ Dean of the School of Government at the University of North Carolina at Chapel Hill or ~~his~~ the Dean's designee shall be ex officio, nonvoting members of the Commission."

SECTION 29.(f) G.S. 105-501 reads as rewritten:

"§ 105-501. Distribution of additional taxes.

The Secretary shall, on a monthly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-twelfth of the costs during the preceding fiscal year of:

- (1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.
- (1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.
- (2) The Property Tax Commission.
- (3) The ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill in operating a training program in property tax appraisal and assessment.
- (4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

SECTION 29.(g) G.S. 113A-4(3) reads as rewritten:

"§ 113A-4. Cooperation of agencies; reports; availability of information.

The General Assembly authorizes and directs that, to the fullest extent possible:

...

- (3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, and the ~~Institute of Government~~ School of Government at the University of North Carolina at Chapel Hill."

SECTION 29.(h) G.S. 115C-50 reads as rewritten:**"§ 115C-50. Training of board members.**

All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the ~~Institute of Government~~, School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the local board of education."

SECTION 29.(i) G.S. 120-129 reads as rewritten:**"§ 120-129. Definitions.**

As used in this Article:

- (1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.
- (1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.
- (2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the ~~Institute of Government~~, School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.
- (3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives."

SECTION 29.(j) G.S. 120-161 reads as rewritten:**"§ 120-161. Facilities and staff.**

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the ~~Institute of Government~~, School of Government at the University of North Carolina at Chapel Hill, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission."

SECTION 29.(l) G.S. 143-64.24, as amended by Section 2.1 of S.L. 2006-95, reads as rewritten:

"§ 143-64.24. Applicability of Article.

This Article shall not apply to the following agencies:

- (1) The General Assembly.
- (2) Special study commissions.
- (3) The Research Triangle Institute.
- (4) ~~The Institute of Government~~, The School of Government at the University of North Carolina at Chapel Hill.
- (5) Attorneys employed by the North Carolina Department of Justice.
- (6) Physicians or doctors performing contractual services for any State agency.

- (7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.
- (8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina."

SECTION 29.(m) G.S. 143-151.9 reads as rewritten:

"§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.

(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

- (1) One member who is a city or county manager;
- (2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
- (3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
- (4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
- (5) One member who is a registered architect;
- (6) One member who is a registered engineer;
- (7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
- (8) One member who is a licensed electrical contractor;
- (9) One member who is a licensed plumbing or heating contractor;
- (10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
- (11) One member selected from the faculty of the ~~Institute of Government;~~ School of Government at the University of North Carolina at Chapel Hill;
- (12) One member selected from the Community Colleges System Office;
- (13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
- (14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the ~~Director of the Institute of Government;~~ Dean of the School of Government at the University of North Carolina at Chapel Hill; (12) by the President of the Community College Colleges System; and (13) by the Commissioner of Insurance."

SECTION 29.(n) G.S. 143B-350(m) reads as rewritten:

"(m) Ethics and Board Duties Education. – The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature and shall include input from the ~~Institute of Government~~, School of Government at the University of North Carolina at Chapel Hill, the North Carolina Board of Ethics, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year."

SECTION 29.(o) G.S. 143B-394.15(c)(4) reads as rewritten:

"(c) Membership. – The Commission shall consist of 39 members, who reflect the geographic and cultural regions of the State, as follows:

- ...
- (4) The following persons or their designees, ex officio:
- a. The Governor.
 - b. The Lieutenant Governor.
 - c. The Attorney General.
 - d. The Secretary of the Department of Administration.
 - e. The Secretary of the Department of Crime Control and Public Safety.
 - f. The Superintendent of Public Instruction.
 - g. The Secretary of the Department of Correction.
 - h. The Secretary of the Department of Health and Human Services.
 - i. The Director of the Office of State Personnel.
 - j. The Executive Director of the North Carolina Council for Women.
 - k. ~~The Director of the Institute of Government~~, Dean of the School of Government at the University of North Carolina at Chapel Hill.
 - l. The Chairman of the Governor's Crime Commission."

SECTION 29.(p) G.S. 147-54 reads as rewritten:

"§ 147-54. Printing, distribution and sale of the North Carolina Manual.

The Secretary of State shall have printed biennially for distribution and sale, two thousand three hundred fifty (2,350) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	1 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1

Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina – Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina – Charlotte Library	4
University of North Carolina – Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts	2
~~Institute of Government~~	~~2~~
<u>University of North Carolina-Chapel Hill School of Government</u>	<u>2</u>
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell University Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.

Secretaries of State of the United States

and Territories 1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s)."

SECTION 30.(a) G.S. 9-10(b) reads as rewritten:

"(b) All summons served personally or by mail under this section or under G.S. 9-11 shall inform the prospective juror that persons ~~65-72~~ years of age or older are entitled to establish in writing exemption from jury service for good cause, shall contain a statement for claiming such exemption and stating the cause and a place for the prospective juror's signature, and shall state the mailing address of the clerk of superior court and the date by which such request for exemption must be received."

SECTION 30.(b) This section becomes effective October 1, 2005, and applies to persons summoned for jury service on or after that date.

SECTION 30.(c) If Senate Bill 1479, 2005 Regular Session, becomes law, this section is repealed.

SECTION 30.5. G.S. 8C-1, Rule 103(a), reads as rewritten:

"Rule 103. Rulings on evidence.

(a) Effect of erroneous ruling. – Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

- (1) Objection. – In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record. No particular form is required in order to preserve the right to assert the alleged error upon appeal if the motion or objection clearly presented the alleged error to the trial court;
- (2) Offer of proof. – In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. ~~Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.~~

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."

SECTION 31. G.S. 14-269.2(h) reads as rewritten:

"(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a ~~firearm-weapon~~ so long as both of the following apply:

- (1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.
- (2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 33.(a) G.S. 15A-615(a) reads as rewritten:

"(a) After a finding of probable cause pursuant to the provisions of Article 30 of Chapter 15A of the General Statutes or indictment for an offense that involves nonconsensual vaginal, anal, or oral ~~intercourse~~, intercourse; an offense that involves vaginal, anal, or oral intercourse with a child 12 years old or ~~less~~, less; or an offense

under G.S. 14-202.1 that involves vaginal, anal, or oral intercourse with a child less than 16 years ~~old, old~~; the victim or the parent, guardian, or guardian ad litem of a minor victim may request that a defendant be tested for the following sexually transmitted infections:

- (1) Chlamydia;
- (2) Gonorrhea;
- (3) Hepatitis B;
- (3a) Herpes;
- (4) HIV; and
- (5) Syphilis.

In the case of herpes, the defendant, pursuant to the provisions of this section, shall be examined for oral and genital herpetic lesions and, if a suggestive but nondiagnostic lesion is present, a culture for herpes shall be performed."

SECTION 33.(b) If Senate Bill 1479, 2005 Regular Session, becomes law, this section is repealed.

SECTION 34. G.S. 15A-1371(b) reads as rewritten:

- "(b) (1), (2) Repealed by Session Laws 1993, c. 538, s. 22.
- (3) Whenever the Post-Release Supervision and Parole Commission will be considering for parole a prisoner serving a sentence of life imprisonment the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:
- a. The prisoner;
 - b. The district attorney of the district where the prisoner was convicted;
 - c. The head of the law enforcement agency that arrested the prisoner, ~~if the head of the agency has requested in writing that he be notified;~~ prisoner and the sheriff of the county where the crime occurred;
 - d. Any of the victim's immediate family members who have requested in writing to be notified; and
 - e. Repealed by Session Laws 1993, c. 538, s. 22.
 - f. As many newspapers of general circulation and other media in the county where the defendant was convicted and if different, in the county where the prisoner was charged, as reasonable.

The Post-Release Supervision and Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, any member of the victim's immediate family who has requested to be notified, and as many newspapers of general circulation and other media in the county or counties designated in sub-subdivision f. of this section as reasonable, written notice of its decision within 10 days of that decision. The Parole Commission shall not, however, include the name of any victim in its notification to the newspapers and other media."

SECTION 35. G.S. 18B-500(a) reads as rewritten:

"(a) Appointment. – The Secretary of Crime Control and Public Safety shall appoint alcohol law-enforcement agents and other enforcement personnel. The Secretary of Crime Control and Public Safety may also appoint regular employees of

the Commission as alcohol law-enforcement agents. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the Division of Alcohol Law Enforcement for workers' compensation purposes while performing duties assigned or approved by the Director of Alcohol Law Enforcement or the Director's designee."

SECTION 35.2. G.S. 20-7 reads as rewritten:

"§ 20-7. Issuance and renewal of drivers licenses.

...

(b1) Application. – To obtain an identification card, learners permit, or drivers license from the Division, a person shall complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and, except for an identification card, demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. At least one of the forms of identification shall indicate the applicant's residence address. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person shall demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form shall request all of the following information, and it shall contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

- (1) The applicant's full name.
- (2) The applicant's mailing address and residence address.
- (3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
- (4) The applicant's date of birth.
- (5) The applicant's valid social security number.
- (6) The applicant's signature.

~~If an applicant does not have a valid social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.~~

The Division shall not issue an identification card, learners permit, or drivers license to an applicant who fails to provide ~~either the applicant's valid social security number or the applicant's valid Individual Taxpayer Identification Number.~~

...

(f) Expiration and Temporary License. – The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. A first drivers license may be issued for a shorter duration if the Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration issued by the United States Department of ~~State, Homeland Security~~. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed unless the

Division determines that a license of shorter duration should be issued when the applicant holds a visa of limited duration from the United States Department of State, Homeland Security, but in no event shall the license expire later than the applicant's lawful presence in the United States. A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

- (1) Is serving on active duty in the armed forces of the United States and is stationed outside this State.
- (2) Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State.

...

(s) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a drivers license of limited duration, under subsection (f) of this section, to an applicant present in the United States under a valid visa issued to the applicant by the United States Department of Homeland Security if the applicant presents that valid visa."

SECTION 35.3. G.S. 18B-1001(3) reads as rewritten:

"(3) On-Premises Unfortified Wine Permit. – An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. It also authorizes the holder of the permit to ship unfortified wine in closed containers to individual purchasers inside and outside the State. Orders received by a winery by telephone, Internet, mail, facsimile, or other off-premises means of communication shall be shipped pursuant to a wine shipper permit and not pursuant to this subdivision. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;
- d. Private clubs;
- e. Convention centers;
- f. Cooking schools;
- g. Community theatres;
- h. ~~Wineries.~~ Wineries;
- i. Wine producers."

SECTION 35.5. G.S. 20-85(b) reads as rewritten:

"(b) ~~The~~ Except as otherwise provided in subsection (a1) of this section, the fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars (\$15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount

allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

SECTION 36.(a) G.S. 20-114.2, as enacted by Section 1 of S.L. 2004-108, reads as rewritten:

"§ 20-114.2. Law enforcement motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.

Law enforcement officers enforcing the laws of the State may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the governmental agency, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less."

SECTION 36.(b) G.S. 20-114.3, as enacted by Section 2 of S.L. 2004-108, reads as rewritten:

"§ 20-114.3. Law enforcement and municipal employee motorized all-terrain vehicles permitted on highways with speed limits of 35 miles per hour or less.

Law enforcement officers enforcing the laws of the State and municipal employees may use motorized all-terrain vehicles, as defined in G.S. 14-159.3(b) and owned or leased by the governmental agency, on public highways where the speed limit is 35 miles per hour or less. Law enforcement officers and municipal employees may operate motorized all-terrain vehicles on nonfully controlled access highways with higher speeds for the purpose of traveling from a speed zone to an adjacent speed zone where the speed limit is 35 miles per hour or less."

SECTION 37. G.S. 20-118(c)(14) reads as rewritten:

"(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

...

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

- a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.
- b. Does not operate on an interstate highway or posted bridge.
- c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

- d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

...."

SECTION 38. G.S. 20-309 is amended by adding a new subsection to read:

"(h) Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was deployed as a member of the United States Armed Forces outside of the continental United States for a total of 45 or more days. In addition, no insurance points under the Safe Driver Incentive Plan shall be assessed for any violation for which a monetary penalty or restoration fee is waived pursuant to this subsection. Any person qualifying under this subsection shall:

- (1) Have an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to the Division;
- (2) Upon reregistration, receive without cost from the Division all necessary registration cards or plates; and
- (3) Upon notice of revocation, be permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child, notwithstanding the provisions of subsection (e) of this section."

SECTION 38.5. G.S. 44A-43(c)(2) reads as rewritten:

"(c) Public Sale. –

...

- (2) The sale must be held on a day other than Sunday and between the hours of ~~10:00 A.M.~~ 9:00 A.M. and 4:00 P.M.:
 - a. At the self-service storage facility or at the nearest suitable place to where the property is held or stored; or
 - b. In the county where the obligation secured by the lien was contracted for.

...."

SECTION 39.(a) G.S. 32A-37(g), as enacted by Section 1 of S.L. 2005-178, reads as rewritten:

"(g) Nothing in this Article requires a person who accepts a power of attorney to permit an attorney-in-fact to conduct business not authorized by the terms of the power of ~~attorney-attorney~~, or otherwise not permitted by applicable statute or regulation."

SECTION 39.(b) This section becomes effective October 1, 2005, and applies to powers of attorney created before, on, or after that date.

SECTION 40.(a) G.S. 45-36.6(b), as enacted by Section 1 of S.L. 2005-123, reads as rewritten:

"(b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any other means, the person or the secured creditor may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument and reinstates the security instrument."

SECTION 40.(b) G.S. 45-37(a), as amended by Section 1 of S.L. 2005-123, reads as rewritten:

"(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security instruments which secure future advances, any security instrument intended to

secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

- (1) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...

- (4) By presentation to the register of deeds of any original security instrument given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Only upon presentation of the original security instruments, and the originals of evidences of indebtedness properly marked shall the register of deeds record a record of satisfaction as described in G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the security instrument or evidences of indebtedness has previously notified the register of deeds by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the affidavit of loss or theft as a separate document, as required by G.S. 161-14.1.

Upon receipt of an affidavit of loss or theft of the security instrument or evidences of indebtedness that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument, the register of deeds shall record a record of satisfaction, as described in G.S. 45 37.2(b). The security instrument shall not be presented for satisfaction after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

- (5) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.
- (6) Security instruments satisfied of record prior to October 1, 2005, pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

...."

SECTION 40.(c) G.S. 47-14(a), as amended by Section 2 of S.L. 2005-123, reads as rewritten:

"(a) The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the

requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, ~~or~~ (iii) the legal sufficiency of any document presented for ~~registration~~ registration, or (iv) whether the original document has been changed or altered."

SECTION 40.(d) This section becomes effective October 1, 2005.

SECTION 41. G.S. 50C-8(c) reads as rewritten:

"(c) Any order may be extended one or more times, as required, provided that the requirements of G.S. 50C-6 or G.S. 50C-7, as appropriate, are satisfied. The court may renew an order, including an order that previously has been renewed, upon a motion by the complainant filed before the expiration of the current order. The court may renew the order for good cause. The commission of an act of unlawful conduct by the respondent after entry of the current order is not required for an order to be renewed. If the motion for extension is uncontested and the complainant seeks no modification of the order, the order may be extended if the complainant's motion or affidavit states that there has been no material change in relevant circumstances since entry of the order and states the reason for the requested extension. Extensions may be granted only in open court and not under the provisions of ~~G.S. 50D-6(e)~~ G.S. 50C-6(d)."

SECTION 44.(a) G.S. 55-8-03(b), as amended by Section 7 of S.L. 2005-268, reads as rewritten:

"(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but for a corporation to which G.S. 55-7-28(e) ~~applies~~ applies in which shares are entitled to be voted cumulatively, the number of directors shall not be decreased unless one of the following applies:

- (1) The decrease is approved by the shareholders in a vote in which the number of shares ~~voting~~ entitled to be voted cumulatively that vote against the proposal for decrease would not be sufficient to elect a director by cumulative voting.
- (2) The decrease is made pursuant to a provision of the articles of incorporation or bylaws fixing a minimum and maximum number of directors and authorizing the number of directors to be fixed or changed from time to time, within the maximum and the minimum, by the shareholders or, unless the articles of incorporation or an agreement valid under G.S. 55-7-31 provides otherwise, the board of directors."

SECTION 44.(b) If Senate Bill 1479, 2005 Regular Session, becomes law, then G.S. 55-11-05(d), as enacted by Section 22 of S.L. 2005-268 and amended by Section 16(b) of Senate Bill 1479, 2005 Regular Session, reads as rewritten:

"(d) In the case of a merger pursuant to G.S. 55-11-07 or G.S. 55-11-09, or a share exchange pursuant to G.S. 55-11-07, references in subsections (a) and (a1) of this section to "corporation" shall include a domestic corporation, a domestic nonprofit corporation, a foreign corporation, and a foreign nonprofit corporation as applicable."

SECTION 44.(c) G.S. 55-11-06(a)(1), as amended by Section 23 of S.L. 2005-268, reads as rewritten:

- "(1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases."

SECTION 44.(d) G.S. 55A-11-04(d), as enacted by Section 40 of S.L. 2005-268, reads as rewritten:

"(d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references in subsections (a) and ~~(b)~~(a1) of this section to "~~corporation~~", ~~other than references to "domestic corporation"~~, "corporation" shall include a domestic corporation, a foreign nonprofit corporation, a domestic business corporation, and a foreign business ~~corporation, corporation~~ as applicable."

SECTION 44.(e) G.S. 55A-11-05(a), as amended by Section 41 of S.L. 2005-268, reads as rewritten:

"(a) When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

- (1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases.
- (2) The title to all real estate and other property owned by each merging corporation is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger.
- (3) The surviving corporation has all liabilities and obligations of each merging corporation.
- (4) A proceeding pending by or against any merging corporation may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for a merging corporation whose separate existence ceases in the merger.
- (5) If a domestic corporation survives the merger, its articles of incorporation are amended to the extent provided in the articles of merger.
- (6) If a foreign corporation or a foreign business corporation survives the merger, it is deemed:
 - a. To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic corporation and (ii) of any obligation of the surviving foreign corporation or foreign business corporation arising from the merger.
 - b. To have appointed the Secretary of State as its agent for service of process in any proceeding for enforcement as specified in sub-subdivision a. of this subdivision. Service of process on the Secretary of State shall be made by delivering to, and leaving with, the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving foreign corporation or foreign business corporation in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving foreign

corporation or foreign business corporation. If the surviving foreign corporation or foreign business corporation is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office, or if there is no principal office on file, its registered office. If the surviving foreign corporation or foreign business corporation is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 55A-11-04(a)(2).

The merger shall not affect the liability or absence of liability of any member of a merging corporation for acts, omissions, or obligations of any merging corporation made or incurred prior to the effectiveness of the merger."

SECTION 44.(f) G.S. 55A-11-06(c), as enacted by Section 42 of S.L. 2005-268, reads as rewritten:

"(c) This section does not limit the power of a foreign corporation to acquire all or part of the ~~shares-memberships~~ of one or more classes ~~or series~~ of a domestic nonprofit corporation through a voluntary exchange or otherwise."

SECTION 44.(g) G.S. 57C-9A-02(a2), as enacted by Section 47 of S.L. 2005-268, reads as rewritten:

"(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and ~~(2)-(1a)~~ of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document."

SECTION 45.(a) G.S. 58-40-50, as amended by Section 7 of S.L. 2005-210, is amended by adding the following new subsection to read:

"(i) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7."

SECTION 45.(b) G.S. 58-36-4, as enacted by Section 18 of S.L. 2005-210, is amended by adding the following new subsection to read:

"(g) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7."

SECTION 45.(c) This section becomes effective October 1, 2006.

SECTION 45.5.(a) G.S. 62-212(c), as enacted by S.L. 2005-185, reads as rewritten:

"(c) Nothing contained in this section ~~effects-affects~~ a provision, clause, covenant, or agreement where the motor carrier indemnifies or holds harmless the contract's promisee against liability for damages to the extent that the damages were caused by

and resulted from the negligence of the motor carrier, its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier."

SECTION 45.5.(b) This section becomes effective October 1, 2005, and applies to contracts entered into on or after that date.

SECTION 46. G.S. 74C-3(b) reads as rewritten:

"(b) "Private protective services" shall not mean:

...

(14) An employee of a security department of a private business that conducts investigations exclusively on matters internal to the business affairs of the ~~business~~ business; or

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts."

SECTION 47. G.S. 90-171.21(d)(3) reads as rewritten:

"(3) A public member appointed by the Governor shall not be a provider of health ~~services~~ services or employed in the health services field, ~~or hold a vested interest at any level in the provision of health services as defined by the North Carolina Board of Ethics.~~ field. No public member appointed by the Governor or person in the public member's immediate family as defined by G.S. 90-405(8) shall be currently employed as a licensed nurse or been previously employed as a licensed nurse."

SECTION 50. The title to Article 12 of Chapter 95 of the General Statutes reads as rewritten:

"Article 12.

~~Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.~~ Units of Government and Labor Unions, Trade Unions, and Labor Organizations, and Public Employee Strikes."

SECTION 52.(a) G.S. 95-232 reads as rewritten:

"§ 95-232. **Procedural requirements for the administration of controlled substance examinations.**

(a) An examiner who requests or requires an examinee to submit to a controlled substance examination shall comply with the procedural requirements set forth in this section.

(b) Collection of samples: the collection of samples for examination or screening shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable. Samples shall be collected in a manner reasonably calculated to prevent substitution of samples and interference with the collection, examination, or screening of samples. Samples for prospective or current employees may be collected on-site or at an approved laboratory.

(c) ~~Approved laboratories: the examiner shall have the option of:~~

(1) ~~Performing the screening test on-site for prospective employees, provided that samples which demonstrate a positive drug test result are sent to an approved laboratory for confirmation, or~~

(2) ~~Having an approved laboratory perform both the screening and confirmation tests as provided in this section.~~

Screening test of samples:

- (1) Prospective employees: a preliminary screening procedure that utilizes a single-use test device may be used for prospective employees.
- (2) Current employees: the screening test of samples for current employees shall only be performed by an approved laboratory.

(c1) Confirmation test of samples: if a preliminary screening procedure or other screening test produces a positive result, an approved laboratory shall confirm any sample that produces a positive that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

..."

SECTION 52.(b) This section constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a). The Department of Labor shall adopt within 30 days of the effective date of this section temporary rules to clarify when employees who are subject to Article 20 of Chapter 95 of the General Statutes may utilize a preliminary screening procedure involving a single-use test device consistent with this section.

SECTION 53.(a) G.S. 113A-57 is amended by adding a new subdivision to read:

"(5) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan."

SECTION 53.(b) If Senate Bill 1587, 2005 Regular Session, becomes law, this section is repealed.

SECTION 54.(a) G.S. 115C-81(e1)(1) reads as rewritten:

"(e1) School Health Education Program to Be Developed and Administered.

- (1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education", "health education", "family living", "health", "healthful living curriculum", or "self-esteem":
 - a. Mental and emotional health;
 - b. Drug and alcohol abuse prevention;
 - c. Nutrition;
 - d. Dental health;
 - e. Environmental health;
 - f. Family living;
 - g. Consumer health;
 - h. Disease control;
 - i. Growth and development;
 - j. First aid and emergency care, including the teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association, or American Red Cross;

- k. Preventing sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, and other communicable diseases;
- l. Abstinence until marriage education; and
- m. Bicycle safety.

As used in this subsection, "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome."

SECTION 54.(b) G.S. 115C-81(e1)(3), (4), and (5) read as rewritten:

- "(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS) virus infection,~~ HIV/AIDS, that ~~includes~~include emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted ~~diseases,~~ diseases when transmitted through sexual contact, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS);~~ HIV/AIDS, shall teach how alcohol and drug use lower inhibitions, which may lead to risky sexual behavior, and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity. ~~Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts.~~
- (4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:
 - a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;
 - b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;
 - c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;

- d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases when transmitted through sexual contact, including ~~Acquired Immune Deficiency Syndrome (AIDS)~~, HIV/AIDS, and other associated health and emotional problems;
 - e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS)~~; HIV/AIDS;
 - f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;
 - g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; and
 - h. Provides factually accurate biological or pathological information that is related to the human reproductive system.
- (5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS)~~, HIV/AIDS, to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use."

SECTION 54.(c) G.S. 115C-81(e1)(7) and (8) read as rewritten:

- "(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS)~~, HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.
- (8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including ~~Acquired Immune Deficiency Syndrome (AIDS)~~, HIV/AIDS, in actual use among adolescent populations and shall explain clearly the difference

between risk reduction and risk elimination through abstinence. The Department of Health and Human Services shall provide the most current available information at the beginning of each school year."

SECTION 54.(d) This section applies beginning with the 2007-2008 school year.

SECTION 56.(a) Article 19A of Chapter 115C of the General Statutes is repealed.

SECTION 56.(b) G.S. 115C-284(c) reads as rewritten:

"(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate ~~certificate, other than an applicant who is qualified under Article 19A of this Chapter,~~ certificate to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. ~~The Board may not require an applicant who is qualified under Article 19A of this Chapter to take an additional exam to demonstrate academic competence.~~ The Board shall not issue provisional certificates for principals."

SECTION 57.(a) Article 26A of Chapter 115C of the General Statutes, as enacted by Section 1 of S.L. 2005-22, is recodified as Article 25A of Chapter 115C of the General Statutes.

SECTION 57.(b) G.S. 115C-375.2(g), as enacted by Section 1 of S.L. 2005-22, reads as rewritten:

"(g) No local board of education, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any act authorized by this ~~subsection,~~ section, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing."

SECTION 57.(c) The introductory language of Section 2(b) of S.L. 2005-22 reads as rewritten:

"SECTION 2.(b) ~~Article 26A,~~ Article 25A of Chapter 115C of the General Statutes, as created in Section 1 of this act, is amended by adding the following new section to read:

SECTION 58. G.S. 115C-391.1(d)(3), as enacted by Section 2 of S.L. 2005-205, reads as rewritten:

"(3) Nothing in this subsection shall be construed to prevent the use of mechanical restraint ~~devices,~~ devices such as handcuffs by law enforcement officers in the lawful exercise of their law enforcement duties."

SECTION 59.(a) G.S. 115C-566(a) reads as rewritten:

"(a) The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the ~~Office of the Governor~~ Department of Administration and representatives of nonpublic schools, shall adopt rules for the procedures a person who is or was enrolled in a home school, in a nonpublic school that is not accredited by the State Board of Education, or in an educational program found

by a court, prior to July 1, 1998, to comply with the compulsory attendance law, must follow and the requirements that person must meet to obtain a driving eligibility certificate. The procedures shall provide that the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate must 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).

The rules shall define exemplary student behavior, define what constitutes the successful completion of a drug or alcohol treatment counseling program, and provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education 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 home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

SECTION 59.(c) G.S. 143-55 reads as rewritten:

"§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified.

~~After—~~Unless otherwise provided by law, after sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration."

SECTION 60. G.S. 120-32.1(d) reads as rewritten:

"(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

- (1) At all times:
 - a. The State Legislative Building;
 - a1. Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998.
 - a2. The areas between the outer walls of the State Legislative Building and the far curblineline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border the land on which it is situated;
 - b. The Legislative Office Building, which shall include the following areas:
 1. The garden area and outer stairway;
 2. The loading dock area bounded by the wall on the east abutting the ~~State Government~~Halifax Street Mall, the southern edge of the southernmost exit lane on Salisbury Street for the parking deck, and the Salisbury Street sidewalk;

3. The area between its outer wall and the near curbline of that section of Lane Street that borders the land on which it is situated; and
 4. The area bounded by its western outer wall, the extension of a line along its northern outer wall to the middle of Salisbury Street, following the middle line of Salisbury Street to the nearest point of the intersection of Lane and Salisbury Streets, and thence east to the near curbline of the Legislative Office Building at its southwestern corner;
- c. Any State-owned parking lot which is leased to the General Assembly;
 - d. The bridge between the State Legislative Building and the ~~State Governmental~~ Halifax Street Mall; and
 - e. A portion of the brick sidewalk surface area of the ~~State Government—~~ Halifax Street Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the ~~Mall water fountain~~, grassy area of the Mall, thence east along the inner edge of the sidewalk adjacent to the southern outer edge of the fountain-grassy area of the Mall to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of ~~beginning~~ beginning; and
 - f. From the center of Lane Street to the far curbline on the south side of the street; between the western edge of the Lane Street driveway to the gardens behind the State Records Center, and Wilmington Street.
- (2) Repealed by Session Laws 1998-156, s. 1, effective September 24, 1998."

SECTION 61.(a) G.S. 122C-270 reads as rewritten:

"§ 122C-270. Attorneys to represent the respondent and the State.

(a) In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. These special counsel shall serve at the pleasure of the Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders as fixed by the Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State ~~facility and on appeals held under this Article.~~ facility. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge. If the respondent appeals, counsel for the appeal

shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) ~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged.~~ If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his the respondent's representation at the trial level until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself or herself to the facility. If the respondent is transferred to a State facility for the mentally ill, assigned counsel is discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321."

SECTION 61.(b) G.S. 122C-289 reads as rewritten:

"§ 122C-289. Duty of assigned counsel; discharge.

~~Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal. Upon completion of an appeal, assigned counsel is discharged.~~ If the respondent is committed, assigned counsel remains responsible for his the respondent's representation at the trial level until discharged by order of district court or until the respondent is otherwise unconditionally discharged. If the respondent appeals, counsel for the appeal shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

SECTION 61.(c) This section becomes effective October 1, 2006, and applies to appeals filed on or after that date.

SECTION 63.(a) G.S. 130A-335.1(a) reads as rewritten:

"(a) ~~The manufacturer of each of, or the person who installs, repairs, or pumps, any septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. Any person who installs, repairs, or pumps systems described in this section may purchase and install any approved filters on the systems.~~ The person who installs the ~~septic tank system~~ effluent filter shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

- (1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
- (2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.
- (3) Be designed and constructed to allow for routine maintenance.
- (4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use."

SECTION 63.(b) If Senate Bill 1587, 2005 Regular Session, becomes law, this section is repealed.

SECTION 64.(a) G.S. 130A-480(d) reads as rewritten:

"(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital ~~subject to Article 2 of Chapter 122C of the General Statutes that operates an emergency room.~~"

SECTION 64.(b) G.S. 131E-14.2(d), as amended by Section 1 of S.L. 2005-70, reads as rewritten:

"(d) Subsection (a) of this section shall not apply to any member of the board of directors of a public hospital if (i) the undertaking or contract or series of undertakings or contracts between the public hospital and one of its officials is approved by specific resolution of the board adopted in an open and public meeting and recorded in its minutes; (ii) the official entering into the contract or undertaking with the public hospital does not in an official capacity participate in any way or vote; and (iii) the amount does not exceed twelve thousand five hundred dollars (\$12,500) for medically related services and twenty-five thousand dollars (\$25,000) for other goods or services within a 12-month ~~period;—period,~~ or the contract is for medically related or administrative services that are provided by a director who serves on the board as an ex officio representative of the hospital medical staff pursuant to a hospital bylaw adopted prior to January 1, 2005, or that are provided by the spouse of that director."

SECTION 65. G.S. 131D-21.2(b) reads as rewritten:

"(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against ~~a nursing an adult care~~ home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented

during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings."

SECTION 66.(a) G.S. 135-40.13A reads as rewritten:

"§ 135-40.13A. Liability of third person; right of subrogation; right of first recovery.

(a) ~~Whenever the Plan pays benefits for hospital, surgical, medical, or prescription drug expenses, with respect to any Plan member, the Plan shall be subrogated, to the extent of any payments under the Plan, to all of the Plan member's rights of recovery against liable third parties, regardless of the entity or individual from whom recovery may be due.~~The Plan shall have the right of subrogation upon all of the Plan member's right to recover from a liable third party for payment made under the Plan, for all medical expenses, including provider, hospital, surgical, or prescription drug expenses, to the extent those payments are related to an injury caused by a liable third party. The Plan member shall do nothing to prejudice these rights. The Plan has the right to first recovery on any amounts so recovered, whether by the Plan or the Plan member, and whether recovered by litigation, arbitration, mediation, settlement, or otherwise. Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

(b) If the Plan is precluded from exercising its right of subrogation, it may exercise its rights of recovery ~~to the extent allowed by law pursuant to G.S. 135-40.13(g).~~ If the Plan recovers damages from a liable third party in excess of the claims paid, any excess will be paid to the member, less a proportionate share of the costs of collection.

(c) In the event a Plan member recovers any amounts from a liable third party to which the Plan is entitled under this section, the Plan may recover the amounts directly from the Plan member. The Plan has a lien, for not more than the value of claims paid related to the liability of the third party, on any damages subsequently recovered against the liable third party. If the Plan member fails to pursue the remedy against a liable third party, the Plan is subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own name or in the name of the Plan member for the amount paid by the Plan.

(d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages recovered by the Plan member, exclusive of the Plan member's reasonable costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the Plan as to the reasonable cost of collection is conclusive and is not a "final agency decision" for purposes of a contested case under Chapter 150B of the General Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

SECTION 66.(b) G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars (\$4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. The limitations on recovery for hospital and medical expenses under this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time."

SECTION 66.(c) This section is effective when it becomes law and applies to payments made by the Plan after July 20, 2004, for which reimbursement is sought on or after the effective date. Subsection (b) of this section applies to wrongful deaths occurring on or after the effective date.

SECTION 67.(a) G.S. 143-3.3(g), as amended by Section 6.35 of S.L. 2005-276, 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, 500 of whom are employees of the 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. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

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."

SECTION 67.(b) If House Bill 914, 2005 Regular Session, becomes law, effective July 1, 2007, the same amendment to G.S. 143-3.3(g), made by subsection (a) of this section, is also made to G.S. 143B-426.39D(g), as enacted by Section 9 of House Bill 914 and recodified by Senate Bill 198, 2005 Regular Session, or to G.S. 143B-426.39A(g), if it is not recodified.

SECTION 68. G.S. 143-717(b) reads as rewritten:

"(b) Membership. – The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

- (1) The Governor shall make the following appointments:
 - a. A flue-cured tobacco farmer.
 - b. A flue-cured tobacco farmer.
 - c. A person in or displaced from tobacco-related employment.
 - d. An at-large appointee.
 - e. An at-large appointee.
 - f. An at-large appointee.
- (2) The President Pro Tempore of the Senate shall make the following appointments:
 - a. A flue-cured tobacco farmer.
 - b. A flue-cured tobacco farmer.
 - c. A ~~burley allotment holder who is also a~~ burley tobacco farmer.
 - d. An at-large appointee.
 - e. An at-large appointee.
 - f. An at-large appointee.
- (3) The Speaker of the House of Representatives shall make the following appointments:
 - a. A flue-cured tobacco farmer.
 - b. A former flue-cured allotment holder who is not also a flue-cured tobacco farmer.
 - c. A burley tobacco farmer.
 - d. An at-large appointee.
 - e. An at-large appointee.
 - f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member."

SECTION 69.(a) G.S. 143B-437.51 reads as rewritten:**"§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

- (1) Agreement. – A community economic development agreement under G.S. 143B-437.57.
- (2) ~~Base years period.~~ – ~~The first 24 months following the date set by the Committee for performance to begin under the agreement period of time set by the Committee during which new employees are to be hired for the positions on which the grant shall be based.~~
- (3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.
- (4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.
- (5) Eligible position. – A position created by a business and filled by a new ~~full-time~~ employee in this State during the ~~base years or in subsequent years of a grant period.~~
- (5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.
- (6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.
- (7) New employee. – A full time employee who represents a net increase in the number of the business's employees statewide. The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.
- (8) Overdue tax debt. – Defined in G.S. 105-243.1.
- (9) Related member. – Defined in G.S. 105-130.7A.
- (10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 69.(b) G.S. 143B-437.52(d) reads as rewritten:

"(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

- (1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.
- (2) The ~~designation agreement~~ contains terms to ensure that the business does not create eligible positions by transferring or shifting to the

project existing positions from another project of the business or a related member of the business."

SECTION 69.(c) G.S. 143B-437.55(a) reads as rewritten:

"(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

- (1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
- (2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
- (3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
- (4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~ for the project and the salaries for these positions."

SECTION 69.(d) G.S. 143B-437.56(c) reads as rewritten:

"(c) The grant may be based only on eligible positions created during the base years, ~~unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant period set by the Committee.~~"

SECTION 69.(e) G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

- (1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base years and later years period.
- (2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
- (3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
- (4) The amount of the grant based on a percentage of withholdings.
- (5) A method for determining the number of new employees hired during a grant year.
- (6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
- (7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
- (8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
- (9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.
- (10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant

at its discretion if the business does not remain at the site for the required term.

- (11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years period."

SECTION 69.(f) G.S. 143B-437.58(a) reads as rewritten:

"(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the base years and the new eligible positions created during each subsequent preceding calendar year and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information and State and federal tax returns of individual taxpayers submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars (\$1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited."

SECTION 69.(g) If House Bill 2744, 2005 Regular Session, becomes law, this section is repealed.

SECTION 70. G.S. 145-23, as enacted by S.L. 2005-78, reads as rewritten:

"§ **145-23. State birthplace of traditional pottery.**

The Seagrove area, including portions of Randolph, Chatham, Lee, Moore, and Montgomery Counties, is designated as the official location of the birthplace of North Carolina traditional pottery."

SECTION 71. G.S. 147-33.72F reads as rewritten:

"§ **147-33.72F. Procurement procedures; cost savings.**

Pursuant to Part 4 of this Article, the Office of ~~State~~ Information Technology Services shall establish procedures for the procurement of information technology. The procedures may include aggregation of hardware purchases, the use of formal bid procedures, restrictions on supplemental staffing, enterprise software licensing, hosting, and multiyear maintenance agreements. The procedures may require agencies to submit information technology procurement requests to the Office of ~~State~~ Information Technology Services on October 1, January 1, and June 1 of each fiscal year in order to allow for bulk purchasing."

SECTION 72.(a) G.S. 147-33.97 reads as rewritten:

"§ **147-33.97. Information technology procurement policy; reporting requirements.**

(a) Policy. – In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically

handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(a1) A vendor submitting a bid shall disclose in a statement, provided contemporaneously with the bid, where services will be performed under the contract sought, including any subcontracts and whether any services under that contract, including any subcontracts, are anticipated to be performed outside the United States. Nothing in this section is intended to contravene any existing treaty, law, agreement, or regulation of the United States.

(a2) The State Chief Information Officer shall retain the statements required by subsection (a1) of this section regardless of the State entity that awards the contract and shall report annually to the Secretary of Administration on the number of contracts which are anticipated to be performed outside the United States.

(b) Reporting. – Every State agency that makes a direct purchase of information technology using the services of the Office shall report directly to the Department of Administration all information required by G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office."

SECTION 72.(b) This section becomes effective October 1, 2006, and applies to all bids submitted on or after that date.

SECTION 74. G.S. 160A-270(c), as amended by Section 4 of S.L. 2005-227, reads as rewritten:

"(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular ~~contract auction~~ or for all ~~contracts auctions~~ under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions."

SECTION 75.5.(a) Section 16 of S.L. 2005-428 is repealed.

SECTION 75.5.(b) Article 12A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. – The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Additional Rules. – In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section."

SECTION 76.(a) G.S. 163-165.7(a), as enacted by Section 1 of S.L. 2005-323 reads as rewritten:

"(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

- (1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.
- (2) That the voting system comply with all federal requirements for voting systems.
- (3) That the voting system must have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct as required by G.S. 163-132.5G.
- (4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.
- (5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.
- (6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party

recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

- (7) That the vendor must quote a statewide uniform price for each unit of the equipment.
- (8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

~~No~~ If a voting system was acquired or upgraded by a county before August 1, 2005, shall be used in an election during or after 2006 unless the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection.

SECTION 76.(b) G.S. 163-182.1(b)(1), as enacted by Section 5 of S.L. 2005-323, reads as rewritten:

- "(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, ~~and~~ full counts of one or more one-stop early voting ~~sites~~ sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted."

SECTION 76.(c) G.S. 163-182.2(b)(1a), as enacted by Section 5 of S.L. 2005-323, reads as rewritten:

"(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night."

SECTION 76.(d) Section 7 of S.L. 2005-323 is repealed.

SECTION 76.8. The catch line to G.S. 158-33 reads as rewritten:

"§ 158-33. **Creation of Global TransPark Development Zone, North Carolina's Eastern Region.**"

SECTION 77. Section 11 of Chapter 149 of the 1931 Session Laws, as amended by Chapter 255 of the 1947 Session Laws and Chapter 745 of the 1953 Session Laws and Chapter 20 of the 1985 Session Laws and Section 42 of Chapter 199 of the 2004 Session Laws, is rewritten to read:

"Sec. 1. The term of the School Board shall be for four years and the governing body of the City of Asheville shall, during the month of March 2007 and quadrennially thereafter, appoint or elect two persons to the Board for four-year terms or until their successors are elected and qualified, and, during the month of March 2009, and quadrennially thereafter, appoint or elect three persons to the Board for four-year terms or until their successors are elected and qualified. All Board members shall be residents of the Asheville City School District and shall be persons known to be in favor of public education and interested in the welfare of the schools and shall be appointed or elected with the sole object in view of maintaining the efficiency of the schools of said district and without any partisan prejudice or bias. If any vacancy in the membership of said board occurs by reasons of death or resignation or otherwise, the governing body of the City of Asheville shall fill the same appointment or election. Terms shall begin on April 1 and in April 2007, and each biennial year thereafter, the Board shall meet and elect a chairman, who will preside over the meetings of the Board. A majority of the members of the Board shall constitute a quorum and the chairman or two members may call a meeting.

"Sec. 2. That all laws and clauses in conflict with this Act are hereby repealed.

"Sec. 3. That this Act shall be effective when it becomes law."

SECTION 78. Chapter 273 of the 1983 Session Laws, as amended by Section 127 of Chapter 1034 of the 1983 Session Laws, is amended by adding the following new sections to read:

"Section 1.2. Beginning with fiscal year 2007-2008 and every fiscal year thereafter, the Burke County Board of Commissioners may appropriate up to ten percent (10%) of the anticipated revenues in Section 1(2) of the Act to the local current expense fund of the Burke County Board of Education. All remaining revenues shall be appropriated by the Burke County Board of Commissioners to the local capital outlay fund of the Burke County Board of Education.

"Section 1.3. In the alternative to Section 1.2 above, during any fiscal year in which the anticipated revenues by the Burke County Board of Commissioners for appropriation under Section 1(2) of the Act exceed the amount of seven million dollars (\$7,000,000), the Burke County Board of Commissioners may appropriate an amount equal to fifty percent (50%) of the revenues designated for school capital expenditures and debt under Article 42 of Chapter 105 of the North Carolina General Statutes from the anticipated revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Burke County Board of Education as part of its appropriation to that fund, or (3) both funds.

"Section 1.4. In the event that the Burke County Board of Education receives additional capital outlay revenues from a fund or source other than those in existence on or before August 3, 2005 ("the Additional Capital Revenue"), then, to the extent permitted by applicable law, the Board of Commissioners may appropriate up to fifty percent (50%) of the value of the Additional Capital Revenue appropriated for use to or used by the Board of Education in any fiscal year from the revenues appropriated under Section 1(2) of the Act to (1) the Burke County Board of Commissioners' general fund, (2) the local current expense fund of the Board of Education as part of its appropriation to that fund, or (3) both funds. In no event shall the amount of this appropriation exceed the anticipated revenues appropriated under Section 1(2) of the Act."

SECTION 79. Section 4 of S.L. 1991-1012 is repealed.

SECTION 80. Section 11.69(b2)(3) of S.L. 1997-443, as enacted by Section 3 of S.L. 2001-234, reads as rewritten:

"(b2) Notwithstanding the provisions of subsection (b1) of this section, any person who obtained an exemption under subsection (b) of this section for the construction of a new building that is not connected to any other existing structure by more than a protected walkway, and who obligated one or more Qualifying Financial Commitments for the construction of the building of a value totaling at least twenty-five thousand dollars (\$25,000), before January 1, 2001, may proceed to develop the beds and obtain a license for the operation of the beds if all of the following conditions are met. Exemptions that were received for increases in bed capacity of existing buildings must meet the requirements set forth in subsection (b1) of this section.

...

- (3) ~~Not later than the close of business on December 1, 2005, the person granted the exemption shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the building inspector for the facility for which the exemption was granted.~~ Not later than the close of business on June 30, 2006, the

person granted the exemption who has met the requirements set forth in subdivisions (1) and (2) of this subsection shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the building inspector for the facility for which the exemption was granted."

SECTION 81.(a) Section 4 of S.L. 2005-16 reads as rewritten:

"SECTION 4. ~~This act is effective when it becomes law.~~becomes effective July 1, 2005."

SECTION 81.(b) This section becomes effective April 26, 2005.

SECTION 82.(a) The introductory language of Section 5 of S.L. 2005-123 is rewritten to read:

"SECTION 5. G.S. 47-46.1 and G.S. 47-46.2 read as rewritten:"

SECTION 82.(b) If Senate Bill 1479, 2005 Regular Session, becomes law, this section is repealed.

SECTION 83. The prefatory language in Section 19 of S.L. 2005-210 is amended by deleting: "58-37(l)" and substituting "58-37-35(l)".

SECTION 89.(a) G.S. 143B-267, as amended by Section 17.25(a) of S.L. 2005-276, reads as rewritten:

"§ 143B-267. Post-Release Supervision and Parole Commission – members; selection; removal; chairman; compensation; quorum; services.

Effective August 1, 2005, the Post-Release Supervision and Parole Commission shall consist of one full-time member and two half-time members. The three 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 any members serving on the Commission on June 30, 2005, shall expire on that date. 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 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 member of the Commission to serve as 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 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. Notwithstanding any other provision of law, the half-time members of the Commission shall not be subject to the provisions of G.S. 135-3(8)(c).

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction."

SECTION 91.(a) S.L. 2005-344 is amended by adding a new section to read:

"SECTION 31.1.(jj) If House Bill 1023, 2005 Regular Session, becomes law, then that act is amended by adding a new section to read:

'SECTION 10.5. Section 10.3 of this act is effective for taxable years beginning on or after January 1, 2005."

SECTION 91.(b) G.S. 105-163.2B reads as rewritten:

"§ 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~~ in an amount of six hundred dollars (\$600.00) or more. The amount of taxes to be withheld is seven percent (7%) of the winnings. The Commission must file a ~~return and return~~ pay the withheld taxes, and report the amount withheld 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 91.(c) G.S. 114-19.16 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 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 vendor, a form signed by the prospective employee of the Commission, or of the prospective 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 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 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 91.(d) S.L. 2005-344 is amended by adding a new section to read:

"SECTION 31.1.(kk) If House Bill 1023, 2005 Regular Session becomes law, then that act is amended by adding a new section to read:

"SECTION 2.1. The State Education Assistance Authority shall report annually to the Joint Legislative Commission on Governmental Operations regarding the use of the funds allocated to the Authority under this act."

SECTION 91.(e) If Senate Bill 1523, 2005 Regular Session, becomes law, subsections (b) and (c) of this section are repealed.

SECTION 91.6. S.L. 2005-276 is amended by adding the following new section to read:

"SECTION 19A.4. Funds appropriated in this act to the Department of Cultural Resources for the 2005-2006 fiscal year for the Edenton Signers Memorial may be used to establish the Memorial on the grounds of the Chowan County Courthouse or

Courthouse Green to honor Hugh Williamson, a signer of the United States Constitution."

SECTION 91.7. G.S. 97-18 reads as rewritten:

"§ 97-18. Prompt payment of compensation required; installments; payment without prejudice; notice to Commission; penalties.

...

(c) If the employer or insurer denies the employee's right to compensation, the employer or insurer shall notify the Commission, on or before the fourteenth day after it has written or actual notice of the injury or death, or within such reasonable additional time as the Commission may allow, and advise the employee in writing of its refusal to pay compensation on a form prescribed by the Commission. This notification shall (i) include the name of the employee, the name of the employer, the date of the alleged injury or death, the insurer on the risk, if any, and a detailed statement of the grounds upon which the right to compensation is denied, and (ii) advise the employee of the employee's right to request a hearing pursuant to G.S. 97-83. If the employer or insurer, in good faith, is without sufficient information to admit the employee's right to compensation, the employer or insurer may deny the employee's right to compensation.

(d) In any claim for compensation in which the employer or insurer is uncertain on reasonable grounds whether the claim is compensable or whether it has liability for the claim under this Article, the employer or insurer may ~~deny the claim in good faith or~~ initiate compensation payments without prejudice and without admitting liability. The initial payment shall be accompanied by a form prescribed by and filed with the Commission, stating that the payments are being made without prejudice. Payments made pursuant to this subsection may continue until the employer or insurer contests or accepts liability for the claim or 90 days from the date the employer has written or actual notice of the injury or death, whichever occurs first, unless an extension is granted pursuant to this section. Prior to the expiration of the 90-day period, the employer or insurer may upon reasonable grounds apply to the Commission for an extension of not more than 30 days. The initiation of payment does not affect the right of the employer or insurer to continue to investigate or deny the compensability of the claim or its liability therefor during this period. If at any time during the 90-day period or extension thereof, the employer or insurer contests the compensability of the claim or its liability therefor, it may suspend payment of compensation and shall promptly notify the Commission and the employee on a form prescribed by the Commission. The employer or insurer must provide on the prescribed form a detailed statement of its grounds for denying compensability of the claim or its liability therefor. If the employer or insurer does not contest the compensability of the claim or its liability therefor within 90 days from the date it first has written or actual notice of the injury or death, or within such additional period as may be granted by the Commission, it waives the right to contest the compensability of and its liability for the claim under this Article. However, the employer or insurer may contest the compensability of or its liability for the claim after the 90-day period or extension thereof when it can show that material evidence was discovered after that period that could not have been reasonably discovered earlier, in which event the employer or insurer may terminate or suspend compensation subject to the provisions of G.S. 97-18.1.

...."

SECTION 93.(a) G.S. 7A-133(b) reads as rewritten:

"(b) For district court districts of less than a whole county, or with part or all of one county with part of another, the composition of the district is as follows:

- (1) District Court District 9 consists of Franklin and Granville Counties and the remainder of Vance County not in District Court District 9B.
- (2) District Court District 9B consists of Warren County and East Henderson I, North Henderson I, North Henderson II, Middleburg, Townsville, and Williamsboro Precincts of Vance County.
- (3) District Court District ~~20B~~ 20C consists of the remainder of Union County not in District Court District ~~20C~~. 20B.
- (4) District Court District ~~20C~~ 20B consists of Precinct 01: Tract 204.01: Block Group 2: Block 2040, Block 2057, Block 2058, Block 2060, Block 2061, Block 2062, Block 2064, Block 2065; Tract 204.02: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034; Block Group 3: Block 3000, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047; Block Group 4: Block 4035, Block 4054, Block 4055; Precinct 02: Tract 205: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1037, Block 1038; Block Group 2: Block 2081, Block 2082, Block 2092, Block 2099, Block 2100, Block 2101, Block 2102; Tract 206: Block Group 3: Block 3036, Block 3038, Block 3039, Block 3040, Block 3048; Block Group 4: Block 4053; Precinct 03, Precinct 04, Precinct 06: Tract 202.02: Block Group 1: Block 1012, Block 1013, Block 1014, Block 1015, Block 1017, Block 1018, Block 1021, Block 1022, Block 1023; Tract 204.01: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2033, Block 2034, Block 2035, Block 2036, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2056, Block 2063, Block 2999; Precinct 08, Precinct 09, Precinct 10, Precinct 13, Precinct 23: Tract 206: Block Group 4: Block 4051; Precinct 25: Tract 206: Block Group 4: Block 4036; Precinct 34, Precinct 36, Precinct 43 of Union County.

Precinct boundaries as used in this section for Vance County are those shown on maps on file with the Legislative Services Office on May 1, 1991, for Union County, are those shown on the Legislative Services Office's redistricting computer database on

January 1, 2005; and for other counties are those reported by the United States Bureau of the Census under Public Law 94-171 for the 1990 Census in the IVTD Version of the TIGER files."

SECTION 93.(b) This section becomes effective December 1, 2005, or the date upon which Section 14.2(f) of S.L. 2005-276 is approved under section 5 of the Voting Rights Act of 1965, whichever is later.

SECTION 93.(c) If House Bill 198, 2005 Regular Session, becomes law, this section is repealed.

SECTION 94.(a) Section 5 of S.L. 2005-305 is repealed.

SECTION 94.(b) The Town of Matthews may adopt ordinances, only after holding public hearings, to regulate the removal of trees from public and private property within the town in order to preserve, protect, and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens.

SECTION 95. G.S. 18B-101(9), as amended by Section 1 of S.L. 2005-277, reads as rewritten:

"(9) 'Malt beverage' means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage except unfortified or fortified wine as defined by this Chapter, containing at least one-half of one percent (0.5%), and not more than fifteen percent (15%), alcohol by volume. Any malt beverage containing more than six percent (6%) alcohol by volume shall bear a label clearly indicating the alcohol content of the malt beverage."

SECTION 96.5. If House Bill 706, 2005 Regular Session, becomes law, then Section 1 of S.L. 2005-198 is repealed.

SECTION 97. Section 6 of S.L. 2005-389 reads as rewritten:

"**SECTION 6.** Section 1 of this act becomes effective ~~July 1, 2007~~ January 1, 2007. The remainder of the act is effective 90 days after it becomes law."

SECTION 98. Section 4 of S.L. 2005-360 is repealed.

SECTION 98.1. G.S. 20-45(c), as amended by Section 2.1 of S.L. 2006-105, reads as rewritten:

"(c) Any sworn law enforcement officer with ~~jurisdiction~~ jurisdiction, including a member of the State Highway Patrol, is authorized to seize the certificate of title, registration card, permit, license, or registration plate, if the officer has electronic or other notification from the Division that the item has been revoked or cancelled, or otherwise has probable cause to believe that the item has been revoked or cancelled under any law or statute, including G.S. 20-309(e). If a criminal proceeding relating to the item is pending, the law enforcement officer in possession of that item shall retain the item pending the entry of a final judgment by a court with jurisdiction. If there is no criminal proceeding pending, the law enforcement officer shall deliver the item to the Division."

SECTION 98.3. Part 2J of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2J. Wine and Grape Growers Council.

"§ 143B-437.90. **North Carolina Wine and Grape Growers Council – Creation; powers and duties.**

There is created the North Carolina Wine and Grape Growers Council of the Department of Commerce. The North Carolina Wine and Grape Growers Council shall have the following powers and duties:

....

"§ 143B-437.91. North Carolina Wine and Grape Growers Council – Composition; terms; reimbursement.

(a) The North Carolina Wine and Grape Growers Council shall consist of 11 members appointed by the Secretary of Commerce in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars (\$10,000) worth of grapes annually. The Secretary shall appoint members for staggered four-year terms. Members shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the Secretary for misfeasance, malfeasance, or nonfeasance."

SECTION 98.3.(b) 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 Commerce 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 Commerce under this section shall not exceed five hundred thousand dollars (\$500,000) per fiscal year. The Department of Commerce shall allocate the funds received under this section to the North Carolina Wine and 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 Commerce 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."

SECTION 98.5.(a) G.S. 130A-309.10 is amended by adding a new subsection to read:

"(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (12) of subsection (f) of this section, the oyster shells may be disposed of in the landfill."

SECTION 98.5.(b) G.S. 130A-309.10(l), as enacted by subsection (a) of this section, becomes effective 1 January 2007.

SECTION 98.5.(c) Section 4 of S.L. 2005-362 is rewritten to read:

"SECTION 4. Sections 1, 2, and 3 of this act become effective 1 October 2009 except that G.S. 130A-309.10(f)(12), as enacted by Section 2 of this act, becomes effective 1 January 2007. Section 4 of this act becomes effective 1 January 2007."

SECTION 99. G.S. 14-112.2(c), as enacted by Section 2 of S.L. 2005-272, reads as rewritten:

"(c) It is unlawful for a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or

property, or benefit someone other than the elder adult or disabled adult. This subsection shall not apply to a person acting within the scope of ~~their~~ that person's lawful authority as the agent for the elder adult or disabled adult."

SECTION 99.4.(a) G.S. 120-47.7B, as enacted in Section 1 of S.L. 2005-456, is amended by adding a new subsection to read:

"(d) Any person, when in doubt about the applicability and interpretation of this Article in a particular context, may submit in writing the facts of the situation to the Secretary of State with a request for a written opinion to establish the standard of duty regarding compliance with this Article. Any such opinion so issued shall specifically refer to this subsection. No person shall be subject to prosecution or civil action for failure to comply with this Article if the person has relied upon and complied with a written opinion issued by the Secretary of State under this subsection."

SECTION 99.4.(c) G.S. 147-54.39, as enacted in Section 2 of S.L. 2005-456, is amended by adding a new subsection to read:

"(d) Any person, when in doubt about the applicability and interpretation of this Article in a particular context, may submit in writing the facts of the situation to the Secretary of State with a request for a written opinion to establish the standard of duty regarding compliance with this Article. Any such opinion so issued shall specifically refer to this subsection. No person shall be subject to prosecution or civil action for failure to comply with this Article if the person has relied upon and complied with a written opinion issued by the Secretary of State under this subsection."

SECTION 99.4.(d) G.S. 147-54.41(d), as enacted in Section 2 of S.L. 2005-456, reads as rewritten:

"(d) If the person granting the scholarship in subsection (c) of this section is outside North Carolina, the ~~covered person or legislative employee-executive branch officer~~ accepting the scholarship shall be responsible for filing the report."

SECTION 99.4.(e) G.S. 147-54.41(e)(2), as enacted in Section 2 of S.L. 2005-456, reads as rewritten:

"(e) This section shall not apply to any of the following:

...

(2) Any gift from a family member to ~~a covered person or legislative employee-an executive branch officer.~~

SECTION 99.4.(f) This section becomes effective January 1, 2007.

SECTION 99.4.(g) This section is only effective if House Bill 1842, 2005 Regular Session, is not enacted.

SECTION 99.5.(a) Subsection (a) of Section 3 of S.L. 2005-462 is rewritten to read:

"(a) A manufacturing redevelopment district may be established on any parcel or tract of land or on any combination of contiguous parcels or tracts of land as provided in this section. To establish a manufacturing redevelopment district, the new operator of the manufacturing facilities located within the boundaries of the district shall certify to the Secretary of State that the district meets all of the criteria set out in this section. The certification shall describe the boundaries of the district by metes and bounds and shall set out the specific financial mechanism that guarantees completion of the assessment and remediation program as required under subdivision (8) of subsection (b) of this section. The district shall be considered to be established as a manufacturing redevelopment district on the date the Secretary of State approves the certification. The Secretary of State shall approve the certification if the new operator provides sufficient documentation that the new operator has met each of the criteria set out in subsection

(b) of this section. Once established, a manufacturing redevelopment district shall continue to exist until title to the real property comprising the district is transferred to the State as provided in Section 7 of this act."

SECTION 99.5.(b) Sub-subdivision b. of subdivision (7) of subsection (b) of Section 3 of S.L. 2005-462 is rewritten to read:

"b. Accepted responsibility for assessment and remediation of known and unknown environmental conditions on the property that comprises the manufacturing redevelopment district to standards approved by the Department of Environment and Natural Resources in accordance with this act and other applicable environmental laws, regulations, and rules."

SECTION 99.5.(c) Subdivision (8) of subsection (b) of Section 3 of S.L. 2005-462 is rewritten to read:

"(8) The new operator provides financial assurance, acceptable to the Department of Environment and Natural Resources, for the fulfillment of the requirements set out in sub-subdivisions b. and c. of subdivision (7) of subsection (b) of this section. The financial assurance shall include a prefunded escrow account or other financing mechanism, in an amount not less than five million dollars (\$5,000,000), that runs in favor of the State in the event of a default. The establishment of the prefunded account shall not relieve the new operator of its obligation to comply with applicable federal and State laws, regulations, and rules, and shall not be construed to alter the authority of the Department of Environment and Natural Resources to enforce the requirements of applicable federal and State laws, regulations, and rules. The Department of Environment and Natural Resources shall: (i) review the financial assurance contemplated by this act in light of reasonably available financial assurance and guaranteed remediation products and in light of known and reasonably anticipated unknown environmental conditions at the manufacturing redevelopment district, and (ii) approve or disapprove the financial assurance within 45 days after the new operator submits a complete financial assurance proposal, including copies of the proposed financial assurance instrument or mechanism, to the Department of Environment and Natural Resources. The requirement that the financial assurance is acceptable to the Department of Environment and Natural Resources shall be waived if the Department of Environment and Natural Resources does not complete its review within the 45-day period. The 45-day review period may be extended if the new operator and the Department of Environment and Natural Resources mutually agree to the extension."

SECTION 99.5.(d) Subsection (a) of Section 4 of S.L. 2005-462 is rewritten to read:

"(a) No person who owned or had an interest in any real property within a manufacturing redevelopment district at any time prior to the establishment of the district shall be liable to any private or third party for civil claims arising out of the presence of oil, a hazardous substance, or a hazardous waste on the real property if the cause of action arose after transfer of the property to the new operator under this act, regardless of when the oil, hazardous substance, or hazardous waste was brought to or

discovered at the site. The qualified immunity provided by this section shall attach at the time that the Secretary of State approves certification of the manufacturing redevelopment district or at the time that the real property comprising the manufacturing redevelopment district is transferred to the new operator, whichever occurs later. The qualified immunity provided by this section is with respect to any theory of legal liability, including, but not limited to, any claim of negligence, nuisance, or trespass, or arising under other common law principles, or arising under any State statute or rule, including, but not limited to, Article 9 of Chapter 130A of the General Statutes, Articles 21 and 21A of Chapter 143 of the General Statutes, and rules adopted pursuant to those Articles. The qualified immunity provided by this section shall continue in effect after the termination of the manufacturing redevelopment district."

SECTION 99.5.(e) Section 6 of S.L. 2005-462 is rewritten to read:

"SECTION 6. Manufacturing redevelopment districts: transfer of property to a subsequent manufacturer.

The new operator or its successor in interest shall not transfer the property comprising the manufacturing redevelopment district to any person, including without limitation any corporate affiliate of the new operator, until the Secretary of State certifies that the person has met all of the requirements applicable to a new operator under subdivisions (7), (8), and (9) of subsection (b) of Section 3 of this act."

SECTION 99.5.(f) Subsection (a) of Section 7 of S.L. 2005-462 is rewritten to read:

"(a) The local government entity to which the real property comprising the manufacturing redevelopment district is transferred pursuant to subdivision (9) of subsection (b) of Section 3 of this act shall accept title to the real property and shall immediately transfer title to the new operator. The consideration for the transfer by the local government entity of title to the new operator shall be the creation of jobs and economic opportunities that will result from restarting manufacturing operations on the real property."

SECTION 99.5.(g) Section 8 of S.L. 2005-462 is rewritten to read:

"SECTION 8. This act is effective when it becomes law. If the Secretary of State has not approved at least one certification by a new operator of a manufacturing facility that is required to establish a manufacturing redevelopment district as provided in subsection (a) of Section 3 of this act prior to 1 September 2008, then this act will expire on 1 September 2008."

SECTION 100. G.S. 18B-1006(p) reads as rewritten:

"(p) The Commission shall issue a special occasion permit under G.S. 18B-1001(8) to a mixed beverage permittee in a sports facility occupied by a major league professional sports team with suites available for sale or lease to patrons of the facility to authorize patrons to make available alcoholic beverages in those suites as if the patron were a host of a reception, party or other special occasion. If the patron occupying the suite so desires, alcoholic beverages by self-service may be made available to any person at least 21 years of age possessing a valid ticket to the event authorizing that person to occupy the suite. At no event may the patron make available a quantity of alcoholic beverages in excess of the amount a person is allowed to buy under G.S. 18B-303(a). A mixed beverage permittee who holds a permit shall provide mixed beverage tax paid spirituous liquor for resale by the container in approved sizes of no larger than 750 milliliters to the host or patron of the suite. This subsection does not authorize any person possessing a valid ticket to an event at the facility to bring

alcoholic beverages onto the premises and consume those alcoholic beverages on the premises, or to remove those beverages from the suite."

SECTION 101.9. Section 13 of S.L. 2005-305 is amended by adding the following at the end: "Sections 4.1 and 4.2 of this act are effective when they become law."

SECTION 102.(a) The Department of Labor shall adopt rules in connection with its requirements regarding fall protection for tower climbers as follows:

- (1) With regard to employer-provided rescue procedures, employers must ensure that at least two trained and designated rescue employees are on-site when employees are working at heights over six feet on the tower, except that where only two employees are on-site, then an employer may comply with this requirement if one employee is a trained and designated rescue employee and one employee has been employed for less than nine months and has received documented orientation from the employer outlining steps to take in an emergency.
- (2) With regard to third-party-provided rescue procedures, the employer must obtain verification from the third-party rescue service that the service is able to respond to a rescue summons in a timely manner and that the service is proficient in rescue-related tasks and equipment needed to rescue climbers from elevated heights on communication structures. The employer must also provide the selected third-party rescue service with contact information regarding the tower site and allow the service to conduct whatever preparation for rescue it deems necessary.

SECTION 102.(b) Notwithstanding G.S. 150B-21.1(a), the Department of Labor may adopt the rules provided for by this section as temporary rules within 270 days after the effective date of this act.

PART III. EFFECTIVE DATE

SECTION 103. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

Became law upon approval of the Governor at 1:22 p.m. on the 27th day of August, 2006.

**VETOES
OF
GOVERNOR MICHAEL F. EASLEY**

G.S. 120-34(a) provides that "In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Bill Number	Title of Bill
SENATE BILL 542	AN ACT TO ALLOW REASONABLE ACCESS TO STATE FACILITIES AND EMPLOYEES FOR CERTAIN EMPLOYEE ASSOCIATIONS.

Veto Message for Senate Bill 542



STATE OF NORTH CAROLINA

OFFICE OF THE GOVERNOR

20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

August 19 2006

GOVERNOR'S OBJECTIONS AND VETO MESSAGE

Senate Bill 542 "An Act To Allow Reasonable Access To State Facilities And Employees For Certain Employee Associations" would mandate access to state facilities and state employees for employee associations with more than 40,000 members for the purposes of membership recruitment, member consultation, and certain products such as insurance products sold by the associations.

The floor of 40,000 members is substantially higher than other statutory requirements for minimum memberships of employee associations. This and other qualifications in the legislation would therefore have the practical effect of giving exclusive access to state facilities to only one employee association of the many who currently represent the interests of public employees. Such a prohibition is patently unfair and jeopardizes employee rights to free association.

By enumerating the right of certain associations to have access to state facilities and employees to sell products offered on the commercial market, the legislation would also give an unfair competitive advantage to insurers affiliated with these particular employee associations. This provision, at the very least, gives an appearance of endorsement of these products by the state of North Carolina, which is inaccurate and therefore not acceptable.

I have signed an executive order directing all state entities under my control and encouraging all other governmental entities to provide the reasonable access that this legislation attempts to afford employee associations if they meet current statutory requirements for payroll withholding.

Since Executive Order 105 satisfies the core legislative intent of providing access among employees and their employee associations, while ensuring fairness, this legislation is not necessary.

Therefore, I veto the bill.

A handwritten signature in black ink, appearing to read "Easley".

Michael F. Easley

Received
8-21-06
4:50 P.M.
Janet Pruitt

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this 21 day of August 2006 at 4:50 p.m. for reconsideration by that body.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

PROCLAMATION REGARDING VETOED LEGISLATION

Pursuant to Article II, Sec.22(7) of the North Carolina Constitution, a majority of the members of each house of the North Carolina General Assembly have signed written requests stating that a reconvened session to reconsider vetoed legislation is unnecessary.

By this proclamation and pursuant to the authority vested in the Governor by the North Carolina Constitution and North Carolina General Statutes Sec.120-6.1(a), the members of the North Carolina General Assembly, will not reconvene to reconsider Senate Bill 542, "Access to State Facilities," vetoed on August 19, 2006.

Done in Raleigh, North Carolina, on September 5, 2006.




Michael F. Easley
Governor

RESOLUTIONS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 2006

H.J.R. 1836

Resolution 2006-1

A JOINT RESOLUTION HONORING THE APPALACHIAN STATE UNIVERSITY MOUNTAINEERS ON WINNING THE 2005 DIVISION I-AA FOOTBALL CHAMPIONSHIP AND HONORING THE MEMORY OF JIM BRAKEFIELD, FORMER FOOTBALL COACH OF APPALACHIAN STATE UNIVERSITY.

Whereas, the late Jim Brakefield, former head coach of Appalachian State University's football team, led the Mountaineers to 47 victories from 1971 to 1979 and helped the team transition into the Southern Conference and the National Collegiate Athletic Association (NCAA) Division I; and

Whereas, since that time, the Appalachian State University football program has continued its tradition of excellence; and

Whereas, on December 16, 2005, Appalachian State University won the 2005 NCAA Division I-AA Football Championship by defeating the University of Northern Iowa by a score of 21-16; and

Whereas, the 2005 championship was ASU's first Division I-AA NCAA title and the first football championship title for any public college or university in the State of North Carolina; and

Whereas, many individual Mountaineer players were recognized for their efforts during the season, including defensive ends Marques Murrell and Jason Hunter and safety Corey Lynch, who were named to the I-AA All America team; and

Whereas, senior quarterback Richie Williams, Southern Conference Offensive Player of the Year, helped the Mountaineers win the championship game by playing during the second half with an injured ankle; and

Whereas, Jerry Moore, head coach since 1989, earned his first national title and improved his number of victories to 140, the most wins for any coach in the Southern Conference; and

Whereas, the Mountaineers not only won the national championship but were named the Southern Conference champions and finished their 2005 season with a record of 12-3; and

Whereas, the entire football team and coaching staff deserve congratulations for their extraordinary accomplishments; and

Resolutions 2006

Whereas, Appalachian State's national championship has brought great honor and distinction to the State and deserves recognition and appreciation; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly congratulates the Appalachian State University Mountaineers on winning the 2005 National Collegiate Athletic Association Division I-AA Football Championship and recognizes the achievements of the players, coaches, students, alumni, and support staff who were instrumental in helping Appalachian State University win the championship.

SECTION 2. The General Assembly honors the memory of Jim Brakefield for his contributions to the football program at Appalachian State University from 1971 to 1979.

SECTION 3. The Secretary of State shall transmit a copy of this resolution to Appalachian State University Chancellor Kenneth Peacock and head coach Jerry Moore and the family of Jim Brakefield.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of May, 2006.

H.J.R. 1807

Resolution 2006-2

A JOINT RESOLUTION FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM T. CULPEPPER, III TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy occurred on the North Carolina Utilities Commission because of the resignation of Robert K. Koger on December 5, 2005; and

Whereas, the Governor has submitted the name of his appointee, William T. Culpepper, III, to serve the remainder of that term on the North Carolina Utilities Commission, to expire June 30, 2013; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of William T. Culpepper, III to the North Carolina Utilities Commission to serve the remainder of the term expiring June 30, 2013, is confirmed.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of May, 2006.

H.J.R. 2274

Resolution 2006-3

A JOINT RESOLUTION HONORING THE FOUNDERS OF ALPHA PHI ALPHA FRATERNITY, INCORPORATED.

Whereas, Alpha Phi Alpha Fraternity is the first and oldest intercollegiate Greek-letter fraternity established for African-Americans; and

Resolutions 2006

Whereas, Alpha Phi Alpha Fraternity was founded on December 4, 1906, on the campus of Cornell University in Ithaca, New York, by seven students who recognized the need for a strong bond of brotherhood among African descendants in this country; and

Whereas, Alpha Phi Alpha Fraternity was founded by visionaries, known as the "Jewels" of the Fraternity and included Henry Arthur Callis, Charles Henry Chapman, Eugene Kinckle Jones, George Biddle Kelley, Nathaniel Allison Murray, Robert Harold Ogle, and Vertner Woodson Tandy; and

Whereas, Alpha Phi Alpha Fraternity initially served as a study and support group for minority students who faced racial prejudice, both educationally and socially; and

Whereas, Alpha Phi Alpha Fraternity was incorporated on January 29, 1908; and

Whereas, the Jewel founders and early leaders of the Fraternity succeeded in laying a firm foundation for Alpha Phi Alpha's principles of scholarship, fellowship, good character, and the uplifting of humanity; and

Whereas, chapters of Alpha Phi Alpha Fraternity, Incorporated, developed at other colleges and universities; and

Whereas, Alpha Phi Alpha Fraternity, Incorporated, continues to proliferate, spanning the globe with 800 chapters and 160,000 members located throughout the United States, Caribbean Islands, Africa, West Indies, Europe, and Asia; and

Whereas, Alpha Phi Alpha Fraternity, Incorporated, continues to stress academic excellence among its members and recognizes the educational, economic, political, and social challenges faced by African-Americans nationally and internationally; and

Whereas, Alpha Phi Alpha Fraternity, Incorporated, participates in Project Alpha, Go To High School, Go To College, and A Voteless People Is A Hopeless People programs in response to those challenges; and

Whereas, the legacy of Alpha Phi Alpha Fraternity includes the Reverend Dr. Martin Luther King, Jr., W.E.B. DuBois, Paul Robeson, Dick Gregory, Thurgood Marshall, Adam Clayton Powell, Jr., United States Vice President Hubert Humphrey, Duke Ellington, and Jesse Owens; and

Whereas, the legacy of Alpha Phi Alpha Fraternity and the Association of North Carolina Alphas recognize and include among its membership, the current Southern Region Vice-President, Everett B. Ward, the current District Director, Craig F. Reed, John Hope Franklin, Julius L. Chambers, Arthur J. Howard Clement III, Dan Blue, and Gus Witherspoon; and

Whereas, since its founding on December 4, 1906, Alpha Phi Alpha Fraternity, Incorporated, has supplied voice and vision to the struggle of African-Americans and people of color around the world; and

Whereas, Alpha Phi Alpha Fraternity, Incorporated, under the leadership of 32nd General President, Darryl R. Matthews, Sr., will convene for the Centennial Anniversary Convention in Washington, D.C., July 25 through July 30, 2006, where members will gather to commemorate and celebrate the fraternity's tremendous legacy of manly deeds, scholarship, and love for all mankind; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of Henry Arthur Callis, Charles Henry Chapman, Eugene Kinckle Jones, George Biddle Kelley,

Resolutions 2006

Nathaniel Allison Murray, Robert Harold Ogle, and Vertner Woodson Tandy.

SECTION 2. The General Assembly acknowledges the members of Alpha Phi Alpha, Incorporated, on providing 100 years of outstanding service and leadership to their communities.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the President of Alpha Phi Alpha Fraternity.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of May, 2006.

H.J.R. 1019

Resolution 2006-4

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE TOWN OF TROUTMAN ON THE TOWN'S ONE HUNDREDTH ANNIVERSARY.

Whereas, the Town of Troutman, located in Iredell County, will be celebrating 100 years of incorporation in 2005; and

Whereas, Troutman was named for Mrs. Annie Troutman and her sons, Jacob and Sidney, who settled in the area around 1853 and established a wagon shop; and

Whereas, the area had previously been known as Hickory Crossing; and

Whereas, the first officers of the Town were Mayor J.M. Patterson, Commissioners A.D. Troutman, C.M. Wagner, and E.E. Kluttz, and Constable Jay F. Brown; and

Whereas, during the Town's early history, much of its growth was as a result of the railroad's expansion into the area; and

Whereas, the citizens of Troutman have made significant contributions to the social, cultural, political, and economic prosperity of the State of North Carolina; and

Whereas, Troutman has continued to grow and prosper through the continued dedication, insight, and planning of the Town's concerned leaders and citizens; and

Whereas, the Town of Troutman's 100th Anniversary is worthy of celebration and should be enjoyed and supported by all North Carolinians; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of the founders of the Town of Troutman.

SECTION 2. The General Assembly joins the citizens of the Town of Troutman in celebrating the Town's 100th Anniversary.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the Town of Troutman.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 1870

Resolution 2006-5

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE

REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT ALLOWING THE STATE LICENSING BOARD OF GENERAL CONTRACTORS TO EXTEND THE PERIOD IN WHICH A LICENSE REMAINS IN EFFECT AFTER A PERSON LICENSED ON BEHALF OF A FIRM OR CORPORATION CEASES TO BE ASSOCIATED WITH THAT FIRM OR CORPORATION."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 1982

Resolution 2006-6

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, 2006 REGULAR SESSION, TO CONSIDER "A BILL TO BE ENTITLED AN ACT RELATING TO THE FILING PERIOD FOR EMPLOYERS TO PROTEST UNEMPLOYMENT INSURANCE CLAIMS."

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT RELATING TO THE FILING PERIOD FOR EMPLOYERS TO PROTEST UNEMPLOYMENT INSURANCE CLAIMS."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 2038

Resolution 2006-7

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY REQUIRING FINGERPRINTS AND PHOTOGRAPHS BE TAKEN FOR MOTOR VEHICLE VIOLATIONS OF FAILING TO PRODUCE A LICENSE OR LEARNER'S PERMIT TO ANY LAW ENFORCEMENT OFFICER REQUESTING IT FOR LAWFUL PURPOSES PURSUANT TO G.S. 20-29, AND VIOLATIONS OF THE DRIVERS LICENSE AND LEARNER'S PERMIT PROVISIONS IN G.S. 20-30.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT TO PROTECT THE IDENTITY OF INDIVIDUALS BY REQUIRING FINGERPRINTS AND PHOTOGRAPHS BE TAKEN FOR MOTOR VEHICLE VIOLATIONS OF FAILING TO PRODUCE A LICENSE OR LEARNER'S PERMIT TO ANY LAW ENFORCEMENT OFFICER REQUESTING IT FOR LAWFUL PURPOSES PURSUANT TO G.S. 20-29, AND

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VIOLATIONS OF THE DRIVERS LICENSE AND LEARNER'S PERMIT PROVISIONS IN G.S. 20-30."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 2341

Resolution 2006-8

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PREVENT A PERSON CONVICTED OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT TO PREVENT A PERSON CONVICTED OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 2852

Resolution 2006-9

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROTECT MILITARY VETERANS FROM IDENTIFY THEFT.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT TO PROTECT MILITARY VETERANS FROM IDENTIFY THEFT."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 2878

Resolution 2006-10

A JOINT RESOLUTION HONORING NORTH CAROLINA'S VETERANS DURING THE OBSERVANCE OF FLAG DAY.

Whereas, the United States flag has served as a symbol of pride for all Americans for more than 200 years and as a uniting force for the country during times of conflict; and

Whereas, thousands of Americans have served under our nation's flag as members of the armed forces from the Revolutionary War to the Wars in Iraq and Afghanistan; and

Whereas, on August 3, 1949, Congress enacted legislation approving the national observance of Flag Day on June 14 of each year; and

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Whereas, as we observe Flag Day, it is important to pay tribute to the men and women who have bravely risen to the challenge to protect our nation's values; and

Whereas, North Carolina is the site of some of the nation's most important military installations and is currently home to more than 770,000 veterans and 90,000 service men and women serving on active duty, including the National Guard and Reserves; and

Whereas, of the veterans living in North Carolina, more than 568,800 served in times of war, including over 140,000 in the first Gulf War, 225,000 in the Vietnam War, 77,600 in the Korean War, and 90,000 in World War II; and

Whereas, Medal of Honor recipients living in North Carolina, including Korean War Veteran Rodolfo P. (Rudy) Hernandez of Fayetteville, and Vietnam Veterans Walter Joseph (Joe) Marm of Fremont, Robert Martin (Bob) Patterson of Fayetteville, and Gordon R. Roberts of Fort Bragg exemplify North Carolinians who have served their country so well and true; and

Whereas, the General Assembly wishes to honor the memory of the Medal of Honor recipients who gave their lives while serving their country, including Harold B. Durham, Jr. of Rocky Mount, who was killed in 1967 during the Vietnam War; and

Whereas, the North Carolina Veterans Council has designated June 14, 2006, Flag Day, as "Veterans Day at the Legislature" for veterans of North Carolina; and

Whereas, on behalf of the State of North Carolina, the General Assembly wishes to express its gratitude and profound appreciation to the current, retired, and deceased members of the armed forces for their service to the United States during the observance of Flag Day; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the memory of the members of the armed forces who gave their lives in defense of the safety and liberty of the people of the United States.

SECTION 2. The General Assembly acknowledges and expresses its profound appreciation and gratitude to all of North Carolina's veterans past and present for the service they have rendered our nation and our State.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the living Medal of Honor recipients named in this resolution and to the family of Harold B. Durham, Jr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of June, 2006.

H.J.R. 2877

Resolution 2006-11

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF IDA ELIZABETH INMAN CAMERON, FORMER TEACHER AND CIVIC LEADER.

Whereas, Ida Elizabeth Inman Cameron was born on October 9, 1916, in Lumberton, North Carolina, to Ernest Linwood Inman and Hettie Spearman Inman; and

Whereas, Ida Elizabeth Inman Cameron graduated as valedictorian of her class at Redstone Academy in Robeson County and continued her education at Barber Scotia Junior College in Concord, North Carolina, and Shaw University in Raleigh, North Carolina; and

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Whereas, after graduating from college, Ida Elizabeth Inman Cameron returned to Redstone Academy, where she taught science and home economics and coached basketball for nine years; and

Whereas, Ida Elizabeth Inman Cameron later moved to Washington, D.C., where she attended graduate school at Howard University and met the love of her life, Dr. James F. Cameron; and

Whereas, Ida Elizabeth Inman Cameron resumed her role as an educator in Washington, D.C., serving as a teacher, supervisor, and summer school principal until her retirement; and

Whereas, Ida Elizabeth Inman Cameron was a well-respected member of the Washington, D.C., community and was appointed by former Mayor Marion Barry, Jr. to the Mayor's Advisory Committee on Resources and Budget in 1983 and 1987; and

Whereas, Ida Elizabeth Inman Cameron was a member of numerous organizations, including Metropolitan Democratic Club; National Council of Negro Women; American Association of Retired Persons and Retired Teachers Association of Washington, D.C., Professional Coalition of Black Women; Smithsonian Association; Shaw Alumni Association; Redstone/Hayswood Alumni Association; Links; Xi Omega Chapter of Alpha Kappa Alpha Sorority; and Golden Soros; and

Whereas, Ida Elizabeth Inman Cameron founded the Matron's Guild of Lumberton, North Carolina, in 1948 and remained affiliated with the Guild until 1995; and

Whereas, Ida Elizabeth Inman Cameron was active in the Calvary Episcopal Church in Washington, D.C., serving as president of the Calvary Episcopal Church Women, assistant chair of the Parish Council, and vice-chair of the Pastor's Search Committee, and as member of the St. Martha's Guild, Calvary Seniors, and the Vestry Board; and

Whereas, in 1988, Ida Elizabeth Inman Cameron was recognized by the Xi Omega Chapter of Alpha Kappa Alpha Sorority for 50 years of achievement, ability, and service, and was awarded the Master Teacher Award by the Washington, D.C., Junior Citizens Corps and the Outstanding Alumni Award by the Redstone Academy Alumni Association; and

Whereas, during her free time, Ida Elizabeth Inman Cameron enjoyed traveling and playing bridge; she visited 43 states and several countries and won several local and national bridge tournaments, and served as a member of the Washington Bridge Unit of the American Bridge Association; and

Whereas, Ida Elizabeth Inman Cameron died on February 24, 2005, after a lifetime of distinguished service to her community; and

Whereas, Ida Elizabeth Inman Cameron is survived by her daughter, Florence Enid Cameron Jones; two grandsons, Bryant Jones and James Jones; and five great-grandchildren; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the life and memory of Ida Elizabeth Inman Cameron, formerly of Lumberton, North Carolina, for her dedication and commitment to education and her community.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Ida Elizabeth Inman Cameron for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Ida Elizabeth Inman Cameron.

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SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 2006.

H.J.R. 2887

Resolution 2006-12

A JOINT RESOLUTION INVITING THE CAROLINA HURRICANES HOCKEY TEAM, WINNER OF THE STANLEY CUP, AS CHAMPIONS OF THE NATIONAL HOCKEY LEAGUE TO ADDRESS A JOINT SESSION OF THE GENERAL ASSEMBLY.

Whereas, the 2005-2006 Carolina Hurricanes defeated the Montreal Canadiens in six games in the Eastern Conference quarterfinals, the New Jersey Devils in five games in the Eastern Conference semifinals, and the Buffalo Sabres in seven games in the Eastern Conference finals; and

Whereas, the Carolina Hurricanes, having won the Prince of Wales Trophy to become Eastern Conference Champions, took on the Western Conference Champion Edmonton Oilers in a quest to win the prestigious Stanley Cup; and

Whereas, the Carolina Hurricanes defeated the Edmonton Oilers in seven games in the Stanley Cup Finals and are the National Hockey League Champions for the 2005-2006 season; and

Whereas, the General Assembly wishes to honor the team; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The Carolina Hurricanes Hockey Team, the Hurricanes' coach, Peter Laviolette, and team management are invited to address a joint session of the General Assembly in the Hall of the House of Representatives on the call of the Speaker of the House of Representatives and President of the Senate.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to each member of the Carolina Hurricanes Hockey Team, the team's coach, Peter Laviolette, and team management.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 2006.

H.J.R. 2891

Resolution 2006-13

A JOINT RESOLUTION HONORING THE 2006 STANLEY CUP CHAMPION CAROLINA HURRICANES HOCKEY CLUB.

Whereas, the Stanley Cup, the oldest trophy competed for by professional athletes in North America, was donated by Frederick Arthur, Lord Stanley of Preston and Governor General of Canada, in 1893; and

Whereas, Lord Stanley purchased the trophy for presentation to the amateur hockey champions of Canada; and

Whereas, since 1910, when the National Hockey Association took possession of the Stanley Cup, the trophy has been the symbol of professional hockey supremacy; and

Whereas, in the year 1971, the World Hockey Association awarded a franchise to the New England Whalers; and

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Whereas, in 1979, the Whalers played their first regular-season National Hockey League game; and

Whereas, in May 1997, Peter Karmanos, Jr., announced that the team would relocate to Raleigh, North Carolina, and be renamed the Carolina Hurricanes; and

Whereas, on September 13, 1997, the Carolina Hurricanes played its first preseason game in North Carolina at the Greensboro Coliseum against the New York Islanders; and

Whereas, on October 29, 1999, the Carolina Hurricanes played its first game in the Raleigh Entertainment and Sports Arena, now known as the RBC Center; and

Whereas, on May 28, 2002, the Carolina Hurricanes won the Eastern Conference Championship, winning its first trip to the Stanley Cup Finals; and

Whereas, on June 19, 2006, after playing 107 games and an impressive 52-22-8 regular-season record, the Hurricanes defeated the Montreal Canadiens in six games to win the Eastern Conference Quarterfinals, the New Jersey Devils in five games to win the Eastern Conference Semifinals, and the Buffalo Sabres in seven games to win the Eastern Conference Finals; and

Whereas, the Hurricanes defeated the Edmonton Oilers 3-1 to conclude a dramatic seven-game series to win, for the first time in franchise history, the Stanley Cup and become National Hockey League Champions; and

Whereas, the Carolina Hurricanes franchise, management, and players have demonstrated the talent, skill, and determination that have set attendance records and earned the affection and pride of all North Carolinians; and

Whereas, the Carolina Hurricanes Stanley Cup roster of:

#8 Matt Cullen

#11 Justin Williams

#12 Eric Staal

#13 Ray Whitney

#14 Kevyn Adams

#16 Andrew Ladd

#17 Rod Brind'Amour

#18 Mark Recchi

#26 Eric Cole

#27 Craig Adams

#39 Doug Weight

#59 Chad LaRose

#61 Cory Stillman

#63 Josef Vasicek

#2 Glen Wesley

#4 Aaron Ward

#5 Frantisek Kaberle

#6 Bret Hedican

#7 Niclas Wallin

#22 Mike Commadore

#24 Andrew Hutchinson

#48 Anton Babchuk

#70 Oleg Tverdovsky

#29 Martin Gerber; and

#30 Cam Ward

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distinguished themselves during the 2005-2006 season and in the playoffs, with Cam Ward winning the Conn Smythe Trophy as the Most Valuable Player to his team in the playoffs;

Whereas, team management, led by head coach Peter Laviolette, assistant coaches Kevin McCarthy and Jeff Daniels, general manager Jim Rutherford, team owner Peter Karmanos, and many many others, have all had an instrumental role in the Canes' quest for the Cup; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The North Carolina General Assembly honors the accomplishments and dedication of the Carolina Hurricanes Hockey Club, its owner, and management in winning the 2006 Stanley Cup, in community service for its charitable efforts, and for its perseverance and dedication to do Whatever It Takes to achieve its goals in a sportsmanlike manner.

SECTION 2. The Principal Clerk shall transmit a certified copy of this resolution to each member of the Carolina Hurricanes Hockey Club and the team's owner, Peter Karmanos, and head coach Peter Laviolette.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 2006.

S.J.R. 2060

Resolution 2006-14

A JOINT RESOLUTION HONORING THE MEMORY OF CHARLES JEWTRAW, THE FIRST AMERICAN SPEED SKATER TO WIN A GOLD MEDAL DURING THE 1924 WINTER OLYMPICS AND RECOGNIZING JOEY CHEEK, A TWO-TIME OLYMPIAN AND NORTH CAROLINA NATIVE.

Whereas, Joey Cheek grew up in Greensboro, North Carolina, where he graduated from Dudley Senior High School in 1997; and

Whereas, during high school, Joey Cheek was an accomplished in-line skater, who became a junior national champion, set junior national records in the 1,500-meter and 3,000-meter events, and served as a member of two junior world in-line skating teams; and

Whereas, in 1995, Joey Cheek took up speed skating, a sport in which he was also successful; and

Whereas, while trying out for the 2002 Winter Olympics, Joey Cheek set American records in the 500-meter and 1,000-meter speed skating events, which still stand today; and

Whereas, Joey Cheek won his first Olympic medal during the 2002 Winter Olympics, held in Salt Lake City, Utah, by capturing the bronze for his third place finish in the 1,000-meter event; and

Whereas, during the 2006 Winter Olympics, Joey Cheek took the gold medal in the 500-meter event and the silver in the 1,000-meter event; and

Whereas, Joey Cheek has served as a role model for young athletes on and off the rink and has earned the admiration and love of thousands of fans around the world; and

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Whereas, Joey Cheek has given freely to many causes, including donating his 2006 Olympic bonus to Right to Play, an organization that supports children in developing countries to play sports; and

Whereas, Joey Cheek continues this country's record of excellence in speed skating, which began at the 1924 Winter Games in Chamonix, France, when the late Charles Jewtraw, an American speed skater, won the first gold medal of the games in the 500-meter race; and

Whereas, Joey Cheek deserves recognition for his tremendous athletic talent and for the honor and distinction he has brought to North Carolina; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the memory of Charles Jewtraw for his contributions to the sport of speed skating.

SECTION 2. The General Assembly congratulates Joey Cheek on his accomplishments in the sport of speed skating and expresses its appreciation for his efforts to help others with his winnings and talent.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to Joey Cheek.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 2006.

H.J.R. 2890

Resolution 2006-15

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HUGH MORTON.

Whereas, Hugh Morton was born on February 21, 1921, in Wilmington, North Carolina, to Julian Morton and Agnes MacRae Morton; and

Whereas, Hugh Morton was educated at Episcopal High School in Alexandria, Virginia, and at the University of North Carolina at Chapel Hill; and

Whereas, Hugh Morton married the former Julia Taylor in Greensboro on December 8, 1945, and was the father of four children: Julia MacRae Morton, Hugh Morton, Jr., James M. Morton, and Catherine W. Morton; and

Whereas, Hugh Morton was a widely renowned photographer, whose subjects included athletes, politicians, musicians, wildlife, and the beautiful scenery of North Carolina; and

Whereas, Hugh Morton developed a love for photography at the age of 13 while attending camp near Linville, North Carolina, and, by the age of 14, his first photograph was published in Time magazine; and

Whereas, Hugh Morton served as a newsreel photographer in the Army's Signal Corps during World War II and was awarded the Purple Heart and Bronze Star after being wounded; and

Whereas, Hugh Morton served as President of the Carolinas Press Photographers Association, was a founder and Chair of the Southern Short Course in Press Photography, and founded the Grandfather Mountain Camera Clinic and the Grandfather Mountain Nature Photographers' Weekend; and

Whereas, Hugh Morton authored books featuring his photography, including "Hugh Morton's North Carolina" in 2003 and co-authored "Making A Difference In

North Carolina" with Ed Rankin in 1988 and "The ACC Basketball Tournament Classic" with Smith Barrier in 1981; and

Whereas, Hugh Morton served as the producer and photographer of several films and documentaries, including "Masters of Hang Gliding," "The Black Bear," "The Highland Games at Grandfather," and "The Search For Clean Air," a documentary narrated by Walter Cronkite that ran nationally on the PBS Network in 1995; and

Whereas, Hugh Morton was a strong advocate for the environment, preservation, and conservation; and

Whereas, while Hugh Morton cherished photography, his love for Grandfather Mountain was widely recognized by all who knew him; and

Whereas, Hugh Morton inherited Grandfather Mountain from his grandfather, Hugh MacRae, in 1952 and soon after developed the mountain by extending the road to top, building the Mile High Swinging Bridge and a Visitor Center, and establishing a National Weather Service Weather Reporting Station, native wildlife habitats for native species, a nature museum, and a theater; and

Whereas, Hugh Morton resisted the National Park Service's effort to build the final 7.7 miles of the Blue Ridge Parkway through Grandfather Mountain, convincing the federal government to build the award-winning Linn Cove Viaduct, which directs the road around the mountain; and

Whereas, Hugh Morton donated over 4,000 acres of Grandfather Mountain to the Nature Conservancy to ensure the mountain's preservation; and

Whereas, Hugh Morton loved his native State and took every opportunity to promote it, serving as the first President of the North Carolina Azalea Festival in Wilmington, Chair of the USS North Carolina Battleship Commission, which helped save the battleship and bring it to Wilmington; Chair of the Save Cape Hatteras Lighthouse Committee; Chair of the Governor's Advisory Committee on Travel and Tourism; and as President or Chair of the Blue Ridge Parkway Association, North Carolina Travel Industry Association, Southern Highlands Attractions Association, North Carolina Botanical Garden Foundation, and the North Carolina Sports Hall of Fame; and

Whereas, Hugh Morton was instrumental in persuading the Department of Transportation to plant wildflowers along North Carolina's highways; pushed for the passage of the "Ridge Law," which prevented development of the State's mountains over more than 30 feet above the ridgeline; fought to protect the State against air pollution and acid rain; and petitioned the General Assembly to pass the Clean Smokestacks Act in 2002; and

Whereas, Hugh Morton served as a member of the North Carolina Board of Conservation and Development, Chair of the State Advertising Committee, Vice-chair of State Parks Committee, Chair of the AAA Carolina Motor Club; Chair of "Good Roads Committee," Chair of Western Carolina Tomorrow, and Chair of North Carolina Year of the Mountains Commission; and

Whereas, Hugh Morton helped launch the career of Andy Griffith, when he asked the young actor to entertain at the North Carolina Press Photographers Association banquet in 1950; and

Whereas, Hugh Morton was the recipient of many awards and honors, among them: the Distinguished Service Medal from the University of North Carolina at Chapel Hill (1979); North Carolina Award (1983); Theodore Roosevelt Award for Conservation at the White House presented by President George H. W. Bush (1990); Outstanding Conservationist Award by the United States Fish & Wildlife Service

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(1996); North Carolina Press Association's North Carolinian of the Year (1997); Alfred Adams Award for Economic Development from the Boone Area Chamber of Commerce (2000); Phoenix Award from American Society of Travel Writers (2004); and Sue Wilmoth Award for the Advancement of Tourism from the Boone Area Chamber of Commerce (2006); and

Whereas, Hugh Morton was inducted into the University of North Carolina at Chapel Hill School of Journalism Hall of Fame (1990); became the first recipient of the Charles Kuralt Award for bringing exceptional, positive national attention to the State of North Carolina from the North Carolina Travel Industry Association (2000); was named to the North Carolina Business Hall of Fame (2002); was named the first inductee into the North Carolina Tourism Hall of Fame (2006); and was honored with the Hugh Morton Distinguished Professorship in Journalism and Mass Communication (2006); and

Whereas, Hugh Morton received honorary doctorate degrees from Belmont Abbey (1988), Lees-McRae College (1988), Queens College (2002), University of North Carolina at Asheville (2003), University of North Carolina at Wilmington (2004), Appalachian State University (2005), and North Carolina State University (2005); and

Whereas, Hugh Morton died on June 1, 2006, leaving the lasting legacy of Grandfather Mountain and hundreds of memorable photographs of this great State and its many citizens for generations to come; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly expresses high esteem and regard for the extraordinary life of Hugh Morton, one of the State's most distinguished citizens.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Hugh Morton for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Hugh Morton.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 2006.

H.J.R. 1818

Resolution 2006-16

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE NORTH CAROLINA CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTERFUGES.

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE NORTH CAROLINA CONSUMER FINANCE ACT TO VARIOUS LENDING SUBTERFUGES."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

H.J.R. 2311

Resolution 2006-17

A JOINT RESOLUTION HONORING THE FOUNDERS OF THE CITY OF KANNAPOLIS ON THE OCCASION OF THE CITY'S CENTENNIAL ANNIVERSARY.

Whereas, in 1906, James W. Cannon, cotton merchant and textile manufacturer, purchased land in northern Cabarrus and southern Rowan Counties and established a mill village, which later became the City of Kannapolis; and

Whereas, James W. Cannon built towel manufacturing plants in northern Cabarrus County and erected around those plants a "model mill town," a community with decent housing, schools, churches, recreational facilities, a business district, and good jobs; and

Whereas, skilled textile workers moved to Kannapolis from many other states to work in the Cannon plants and produce textile products for the markets of the world, eventually making the Cannon name synonymous with quality and value; and

Whereas, in 1921, James W. Cannon's son, Charles A. Cannon, assumed the leadership of the Cannon Mills Company and continued his father's vision for Kannapolis by expanding the mills and beautifying the business district of the area; and

Whereas, during the Great Depression, Charles A. Cannon managed to keep the Cannon plants open, providing work for the plants' employees even though only a few new orders were being received and helped persuade New York bankers to renew the short-term obligations of the State of North Carolina, thus preventing a disastrous default by the State; and

Whereas, Charles A. Cannon vigorously resisted legislation that adversely affected the textile industry and successfully led the fight against "two price" cotton, which favored foreign textile interests; and

Whereas, Charles A. Cannon and his mother, Mary Ella Bost Cannon, generously supported many charitable causes, including the Cannon Memorial Hospital (now known as the Northeast Medical Center); and

Whereas, Charles A. Cannon's wife, Ruth Louise Coltrane Cannon, promoted musical education in the schools, contributed to the arts and cultural affairs, and supported historic preservation, which included the renovation of the buildings of downtown Kannapolis in the Colonial Williamsburg style; and

Whereas, the Cannon Family through the Cannon Foundation has continued the philanthropic legacy that was first begun by James W. Cannon by generously supporting health initiatives, education, arts and cultural pursuits, and numerous other worthy benevolent causes; and

Whereas, although the textile industry has suffered devastating losses in the last decade, the people of Kannapolis have rallied behind those who have lost jobs due to various plant closings, discussed and developed a shared mission and vision for the future of the City, and supported the various companies that plan to bring economic development projects to Kannapolis; and

Whereas, one of the anticipated revitalization projects for the City of Kannapolis includes the North Carolina Research Campus, a state-of-the-art biotechnology hub that will draw upon the research knowledge and skills from the State's renowned universities, cutting-edge training from community colleges, and the expertise from private businesses; and

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Whereas, David H. Murdock, owner and chairman of Castle & Cooke, Inc., and Dole Food Company, Inc., has established a \$100 million venture capital fund to attract new companies to the Research Campus and a \$150 million charitable foundation to help purchase equipment for the core laboratory and support other nonprofit activities on the campus; and

Whereas, the people of Kannapolis possess an independent and indomitable spirit, portray the characteristics of loyalty, pride of workmanship, and patriotism, show a love for their families, churches, and community, take pride in their accomplishments, history, and heritage, and live with their faces resolutely towards the future; and

Whereas, Kannapolis operated as a city for more than eight decades until its incorporation by the General Assembly in 1984; and

Whereas, throughout the year of 2006, the citizens of Kannapolis plan to observe the 100th anniversary of the birth of their city; and

Whereas, a centennial committee is collecting and preserving historic records and photographs and plans to publish accounts of the early history and traditions; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the life and memory of James W. Cannon and his son, Charles A. Cannon, for their outstanding contributions to the textile industry, the City of Kannapolis, and the State of North Carolina.

SECTION 2. The General Assembly joins the citizens of Kannapolis in celebrating the 100th anniversary of the founding of the mill village that became the City of Kannapolis and encourages the people of this State to participate in activities commemorating this historic occasion.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the Mayor of the City of Kannapolis.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

S.J.R. 2057

Resolution 2006-18

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF JOHN CLARENCE "J.C." SCARBOROUGH, SR., BUSINESS OWNER, HUMANITARIAN, AND CIVIC LEADER.

Whereas, on June 6, 1906, John Clarence "J.C." Scarborough, Sr., completed the requirements to become a licensed funeral director and embalmer, making him the first African-American to be licensed in these professions in the State of North Carolina; and

Whereas, J.C. Scarborough, Sr., received his mortuary training at the Renouard School of Mortuary Science in New York, New York from 1905 to 1906, and thus was one of the first African-Americans in the country to graduate from a mortuary school; and

Whereas, after receiving his license, J.C. Scarborough, Sr., established a funeral home in the City of Durham, which has continued to thrive under the direction of his family, including his grandson, John C. Scarborough, III; and

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Whereas, J.C. Scarborough, Sr., served his profession proudly and was one of the founders of the Funeral Directors and Morticians Association of North Carolina (formerly the Colored Undertakers and Embalmers Association); and

Whereas, J.C. Scarborough, Sr., also distinguished himself by establishing the Daisey E. Scarborough Nursery School in 1938, which was the first licensed day care in North Carolina; and

Whereas, J.C. Scarborough, Sr., showed an outstanding devotion to public service and ran for the Durham City Council in 1947, obtaining 2,464 votes, the highest number of votes ever cast for an African-American seeking office in the City of Durham; and

Whereas, J.C. Scarborough, Sr., worked unselfishly for the betterment of his community and earned the respect and admiration of his colleagues and fellow citizens; and

Whereas, it is fitting that the General Assembly recognize J.C. Scarborough, Sr., on the 100th anniversary of his achievement in becoming the first African-American to be licensed as a funeral director and embalmer by the State of North Carolina; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly honors the life and memory of John Clarence "J.C." Scarborough, Sr., for his accomplishments and his service to the Durham community.

SECTION 2. The Secretary of State shall transmit a certified copy of this resolution to the family of John Clarence "J.C." Scarborough, Sr.

SECTION 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

S.J.R. 1832

Resolution 2006-19

A JOINT RESOLUTION AUTHORIZING THE 2005 GENERAL ASSEMBLY, REGULAR SESSION 2006, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROHIBIT DISORDERLY CONDUCT AT A MILITARY FUNERAL OR MEMORIAL SERVICE.

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The 2005 General Assembly, Regular Session 2006, may consider "A BILL TO BE ENTITLED AN ACT TO PROHIBIT DISORDERLY CONDUCT AT A MILITARY FUNERAL OR MEMORIAL SERVICE."

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of July, 2006.

H.J.R. 2893

Resolution 2006-20

A JOINT RESOLUTION TO SUPPORT THE EFFORTS OF SISTER, SPEAK, A PROGRAM OF THE YWCA IN WINSTON-SALEM, NORTH CAROLINA, IN ITS QUEST TO EDUCATE AFRICAN-AMERICAN WOMEN ABOUT BREAST HEALTH AND BREAST CANCER AWARENESS, TO ENCOURAGE OTHERS

ACROSS THE STATE TO FORM SIMILAR ORGANIZATIONS TO HELP SAVE THE LIVES OF WOMEN IN THIS STATE, AND TO HONOR THE LIVES OF REVEREND CONITA ARCHIE-HUNT, BENITA SIMS, AND GRETCHEN HOLLAND, WHO WERE ADVOCATES FOR EARLY BREAST CANCER DETECTION AND QUALITY TREATMENT FOR AFRICAN-AMERICAN WOMEN.

Whereas, approximately 20,000 new cases of breast cancer are diagnosed among African-American women in the United States each year, making breast cancer the most common cancer among African-American women in this country; and

Whereas, although African-American women over the age of 40 have a lower incidence of breast cancer than Caucasian women, they are more likely to die from the disease because they are often less able to afford adequate and quality medical care; and

Whereas, because of the lack of medical care, many African-American women do not receive regular screening mammograms prior to a breast cancer diagnosis, and they do not receive the full range of treatment options after a diagnosis that might prolong or save their lives; and

Whereas, some studies have raised the possibility that African-American women may be more susceptible to aggressive breast cancers that are difficult to treat; and

Whereas, the five-year survival rate for African-American women is significantly less than that for Caucasian women, and approximately 5,700 African-American women die of breast cancer each year; and

Whereas, in an effort to make African-American women more knowledgeable about breast health and awareness, Sister, Speak, a YWCA Breast Health Education Program, was started in the City of Winston-Salem in January 2001, with a grant from the North Carolina Triad Affiliate of the Susan G. Komen Foundation; and

Whereas, Sister, Speak delivers the message of breast health and awareness to African-American women through church meetings, casual gatherings, hair salons, health fairs, individual chats, sororities, pot luck dinners, and special events; and

Whereas, in 2002, 2003, 2004, and 2005, Sister, Speak provided 85 mammograms to uninsured or underinsured African-American women; and

Whereas, since it was founded, Sister, Speak has reached at least 5,400 African-American women with its message of breast health and awareness; and

Whereas, in 2002, 2003, 2004, and 2005, Sister, Speak was recognized for organizing the largest community and largest nonprofit team to participate in the North Carolina Triad Race for the Cure; and

Whereas, in 2005, three dedicated members of Sister, Speak died from breast cancer: Reverend Conita Archie-Hunt on March 26, 2005, Benita Sims on July 1, 2005, and Gretchen Holland on August 3, 2005; and

Whereas, it is fitting to recognize the work of organizations like Sister, Speak and to honor women of all races who have died from breast cancer; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly recognizes Sister, Speak, a nonprofit organization in Winston-Salem, North Carolina, for its dedication and persistence in reaching out to African-American women in the Triad region of the State to provide them with valuable information about breast health and awareness and free mammograms that may save lives.

SECTION 2. The General Assembly honors the lives of Sister, Speak members Reverend Conita Archie-Hunt, Benita Sims, and Gretchen Holland for their effort to educate African-American women about breast health and awareness and acknowledges the many other women in this State who have lost their battle with breast cancer.

SECTION 3. The General Assembly encourages individuals and organizations in the State to follow Sister, Speak's example and reach out to women of all races to inform them about the risks of breast cancer and the ways to prevent this deadly disease.

SECTION 4. The Secretary of State shall transmit a copy of this resolution to Sister, Speak and to the families of Reverend Conita Archie-Hunt, Benita Sims, and Gretchen Holland.

SECTION 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of July, 2006.

S.J.R. 2064

Resolution 2006-21

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HAMILTON COWLES HORTON, JR., FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Hamilton Cowles Horton, Jr. was born in Winston-Salem on August 6, 1931, to Hamilton Cowles Horton and Virginia Lee Wiggins Horton; and

Whereas, Ham Horton was a devoted member of the Calvary Moravian Church. He began playing the trumpet in the Moravian Band at age seven, later progressed to the tuba, and continued playing at Easter Sunrise Services for 68 years; and

Whereas, Ham Horton graduated from R.J. Reynolds High School in 1949 and, ever mindful of the lessons to be derived from the past, earned an A.B. in History from the University of North Carolina at Chapel Hill in 1953 and an L.L.B. from the School of Law at the University of North Carolina at Chapel Hill in 1956; and

Whereas, Ham Horton served in the United States Navy from 1956 to 1960, achieving the rank of Lieutenant; and

Whereas, Ham Horton practiced law and proudly served his profession as a member of the North Carolina Bar Association and as President of both the Forsyth County Bar Association and the 21st District Bar Association from 1989 to 1990; and

Whereas, Ham Horton harbored a noble devotion to public service, serving with honor and distinction as a member of the North Carolina House of Representatives from 1969 to 1970 and the North Carolina Senate from 1971 to 1974 and 1995 to 2005; and

Whereas, Senator Horton was a true preservationist in matters of architecture, history, culture, and the environment; and

Whereas, Senator Horton was a man of both classical sensibility and a touch of whimsy who translated the Capital Press Corps' motto into Latin – *Usquam Alius Insolens*, or "Anywhere else, we'd just be considered rude"; and

Whereas, Senator Horton regaled and delighted listeners with his lyrical soliloquies, rhapsodizing about the sacrament of country ham amid "the pantheon of North Carolina foods"; the "forbidden fruit" of fireworks smuggled into the State by adolescents; how a move to settle an election in the legislature was "as inappropriate as

Resolutions 2006

wearing brogans to a white-tie wedding;" the "oleaginous" nature of a State budget; and the importance of retaining naked Native Americans on the Senate Coat of Arms, which he traced to a grant of arms to Sir Walter Raleigh's colony on Roanoke Island in 1586; and

Whereas, Ham Horton received numerous awards, including the Carraway Award from Preservation North Carolina in 1997 and the Outdoor Recreation Achievement Award from the United States Department of the Interior in 1976; and

Whereas, Ham Horton remained ever the optimist, resolutely planting his mustard and turnip greens during his final months and teaching his daughter the fine art of biscuit-making; and

Whereas, Ham Horton died on January 31, 2006, at the age of 74; and

Whereas, Ham Horton is survived by his wife, Evelyn Hanes Moore Horton, and a daughter, Rosalie Horton; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The General Assembly designates Hamilton Cowles Horton, Jr. a North Carolina Institution and honors his life and memory in appreciation for his service.

SECTION 2. The General Assembly extends its deepest sympathy to the family and friends of Hamilton Cowles Horton, Jr. and mourns the loss of the Renaissance man, a devoted and humble public servant.

SECTION 3. The Secretary of State shall send a certified copy of this resolution to the family of Hamilton Cowles Horton, Jr.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

H.J.R. 2876

Resolution 2006-22

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WARREN CLAUDE "PETE" OLDHAM, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Warren Claude "Pete" Oldham was born on March 10, 1926, in Indianapolis, Indiana, to the Reverend Philander Oldham and Minta Ann Smith Oldham; and

Whereas, after graduating from high school, Pete Oldham joined the United States Navy in 1944 and later served in the Pacific Theater during World War II; and

Whereas, after serving in the navy, Pete Oldham enrolled at Virginia Union University in Richmond, Virginia, where he was a member of the football team; and

Whereas, Pete Oldham later transferred to Bluefield State College in Bluefield, West Virginia, where he graduated in 1951 with a bachelor of science degree in health, physical education, and recreation; and

Whereas, Pete Oldham received a masters degree in physical education from West Virginia University in 1958 and was certified as a principal by North Carolina A&T State University in 1962; and

Whereas, Pete Oldham taught and coached at Atkins High School in Winston-Salem from 1951 to 1963; and

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Whereas, Pete Oldham worked at Winston-Salem State University from 1963 to 1983 and retired as the University's registrar; and

Whereas, Pete Oldham served with honor and distinction as a member of the General Assembly from 1991 through 2002; and

Whereas, during his six terms in the House of Representatives, Pete Oldham served as Cochair of the Appropriations Committee and also contributed as a member of numerous other committees, including Education, Legislative Redistricting, Pensions and Retirement, State Personnel, and Ways and Means; and

Whereas, Pete Oldham was a member of several fraternal and civic organizations, including the NAACP, Winston Lake YMCA, and the American Legion Post 220; and

Whereas, Pete Oldham was a member of the United Metropolitan Missionary Baptist Church; and

Whereas, Pete Oldham died on February 12, 2006; and

Whereas, Pete Oldham is survived by his wife, Gladys Dandridge Oldham, and his daughters, Donna Oldham and Leslie Oldham Bolden; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the life of its former member Warren Claude "Pete" Oldham and expresses its gratitude for his service to his community, State, and nation.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Warren Claude "Pete" Oldham for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Warren Claude "Pete" Oldham.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 2006.

H.J.R. 1103

Resolution 2006-23

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF FRANK EDWIN RHODES, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Frank Edwin Rhodes was born on August 2, 1914, in Worcester, Massachusetts, to Frank Edwin Rhodes, Sr., and Alberta Stoddard Rhodes; and

Whereas, Frank Edwin Rhodes attended Columbia University, where he took courses concentrating in advertising and management and studied sales management at Rutgers University; and

Whereas, Frank Edwin Rhodes served in the United States Army during World War II as an expert infantryman and sharpshooter and was awarded a Good Conduct Medal; and

Whereas, Frank Edwin Rhodes worked as a real estate executive for many years and served as the President of the company he founded, Frank E. Rhodes, Inc.; and

Whereas, Frank Edwin Rhodes was named Realtor of the Year in 1968 by the Winston-Salem Board of Realtors; and

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Whereas, Frank Edwin Rhodes served his community and profession in many worthwhile capacities, serving as a member of the Forsyth County Zoning Board of Adjustment from 1969 to 1975, and as Chair from 1972 to 1975; and

Whereas, Frank Edwin Rhodes was a member of the Winston-Salem Board of Realtors, the North Carolina Association of Realtors, and the National Association of Realtors; and

Whereas, Frank Edwin Rhodes was a member of numerous civic and fraternal organizations, including the Winston-Salem Kiwanis Club, Salem Masonic Lodge 289, Oasis Shrine Temple, and Winston-Salem Shrine; and

Whereas, Frank Edwin Rhodes was a member of the Centenary United Methodist Church in Winston-Salem; and

Whereas, Frank Edwin Rhodes served with honor and distinction in the General Assembly as a member of the House of Representatives from 1981 to 1982 and 1985 to 1992; and

Whereas, Frank Edwin Rhodes died on July 11, 2004; and

Whereas, Frank Edwin Rhodes is survived by his wife, Fernande G. Rhodes, and children, Ruthann Winecoff, Frank E. Rhodes III, Nelson S. Rhodes, and Tina Rhodes; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The General Assembly honors the life and memory of Frank Edwin Rhodes and recognizes his public service to the State of North Carolina.

SECTION 2. The General Assembly extends its deepest sympathy to the family of Frank Edwin Rhodes for the loss of a beloved family member.

SECTION 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Frank Edwin Rhodes.

SECTION 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

S.J.R. 2066

Resolution 2006-24

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 2005 REGULAR SESSION OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. When the Senate and the House of Representatives, constituting the 2005 Session of the General Assembly, adjourn on Friday, July 28, 2006, they stand adjourned sine die.

SECTION 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 2006.

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OF
GOVERNOR MICHAEL F. EASLEY**

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State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 81 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

WHEREAS, the Governors of Florida, Mississippi, Alabama and Louisiana have proclaimed that a State of Emergency and a State of Disaster exists in these states due to Hurricane Katrina and thereby, have requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the above States; and;

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3) the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida, Mississippi, Alabama and Louisiana's grief stricken areas must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-118; I have further found that citizens in those states have suffered losses and, the imminent threat of further widespread damage within the meaning of N.C.G.S. § 166-A-4(3) will occur,

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED**;

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47 and 105-449.49 for the vehicles transporting food, fuel, equipment, and supplies along North Carolina's Interstate roadways en route to Florida, Mississippi, Alabama and Louisiana's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration and fee requirements:

- (A) The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. § 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- (D) The \$200.00 fee listed in N.C.G.S. § 20-119 for an annual permit to transport mobile homes only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. § 20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from the North Carolina Department of Transportation and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs and other safety requirements

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina Interstate **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the states of Florida, Mississippi, Alabama and Louisiana **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 60 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in such a manner, as to best accomplish the implementation of this rule without endangering the motoring public in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Katrina.

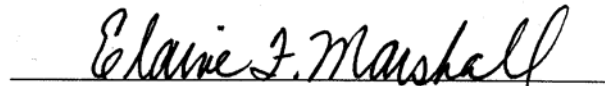
This Executive Order is effective immediately and shall remain in effect for sixty (60) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 1st day of September, 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 82 PROCLAMATION OF STATE EMERGENCY DUE TO HURRICANE KATRINA

WHEREAS, I have determined that a State of Emergency, as defined in N.C.G.S. §§ 166A-4(3) and G.S. 14-288.1(10), exists in the State of North Carolina, as North Carolina conducts humanitarian relief efforts to support the states affected by the devastation brought about by Hurricane Katrina, which began on August 29, 2005;

WHEREAS, it is anticipated that those affected by the devastation of Hurricane Katrina will need and seek assistance for an unspecified period of time: and

NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the law of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, I, therefore, proclaim the existence of a State of Emergency in the State of North Carolina.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to others as necessary to assure proper implementation of this proclamation; and, (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies.

Section 6. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

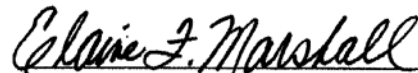
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 3rd day of September, 2005




MICHAEL F. EASLEY

GOVERNOR

ATTEST:


ELAINE F. MARSHALL

SECRETARY OF STATE

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 83 JUVENILE JUSTICE PLANNING COMMITTEE

WHEREAS, the Executive Organization Act of 1973 established the Governor's Crime Commission; and,

WHEREAS, North Carolina General Statute §143B-480, creates the Juvenile Justice Planning Committee as an adjunct committee to advise the Governor's Crime Commission on matters referred to it which are relevant to juvenile justice; and

WHEREAS, pursuant to North Carolina General Statute §143B-480, the composition of the Juvenile Justice Planning Committee shall be designated by the Governor through executive order; and

WHEREAS, the federal Juvenile Justice and Delinquency Act of 1974, as amended, requires states to establish advisory boards to administer juvenile justice and delinquency prevention grants from the United States Department of Justice; and

WHEREAS, the Juvenile Justice Planning Committee is ideally suited to serve as such an advisory board consistent with federal law.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Membership Composition

The Juvenile Justice Planning Committee shall consist of no less than 15 and no more than 33 members each appointed by the Governor and each having training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice.

The majority of the members, as well as the chair, shall not be full-time employees of federal, state, or local government. At least one-fifth of the members shall be under the age of

twenty-four at the time of appointment and at least three members shall be currently or have been under the jurisdiction of the juvenile justice system.

The Governor shall appoint at least one representative from the following:

1. Elected officials representing general purpose local government.
2. Representatives of law enforcement and juvenile justice agencies, which may include: a juvenile or family court judge, a juvenile or local prosecutor, a counsel for children and youth, or a probation worker.
3. Representatives of public agencies concerned with delinquency prevention, which may include: a social services agency, a mental health agency, a state education agency, a special education program, a recreation program, or a youth services agency.
4. Private non-profit agencies working with children.
5. Volunteers who work with delinquents or potential delinquents.
6. Youth workers in alternative programs.
7. Programs providing alternatives to suspension and expulsion.
8. Persons with special experience relating to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence.
9. State or local police departments.
10. Local sheriff's departments.
11. Private non-profit, victim's advocacy organizations (guardian ad litem).
12. Non-profit religious or community groups.

Section 2. Terms of Service

The terms of service for the members shall be for two-years provided, however, that the Governor may remove any member at any time for misfeasance, malfeasance or nonfeasance if necessary and to ensure continued compliance with federal requirements.

Section 3. Chair

The chair of the Juvenile Justice Planning Committee shall be designated by, and shall serve at the pleasure of, the chair of the Governor's Crime Commission.

Section 4. Meetings

The Juvenile Justice Planning Committee shall meet upon the call of the chair or upon written request of one-third of its membership. A majority of the committee shall constitute a quorum for the transaction of business.

Section 5. Administration of Federal Grants

The Juvenile Justice Planning Committee shall serve as North Carolina's advisory board for purposes of administering juvenile justice and delinquency prevention grants from the Department of Justice.

Section 6. Duration

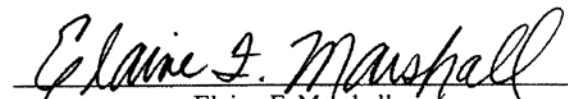
This executive order shall be effective immediately and shall remain in effect until rescinded by the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 84 NORTH CAROLINA EMERGENCY RESPONSE COMMISSION

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Creation

There is hereby created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

- a. Secretary, North Carolina Department of Crime Control and Public Safety, who shall serve as the Chairperson;
- b. Director, Division of Emergency Management, North Carolina Department of Crime Control and Public Safety, who shall serve as the Vice-Chairperson;
- c. Commander, State Highway Patrol, North Carolina Department of Crime Control and Public Safety;
- d. Deputy Secretary, North Carolina Department of Environment and Natural Resources;
- e. Director, Division of Safety and Loss Control, North Carolina Department of Transportation;
- f. Chief, Office of Emergency Medical Services, Division of Facility Services, North Carolina Department of Health and Human Services;
- g. Deputy Director, Training and Inspections Division, Office of State Fire Marshal, North Carolina Department of Insurance;
- h. Director, State Bureau of Investigation, North Carolina Department of Justice;
- i. Director, Division of Public Health, North Carolina Department of Health and Human Services;

- j. Assistant Deputy Commissioner of Labor for Occupational Safety and Health, North Carolina Department of Labor;
- k. President, North Carolina Community College System; or
- l. Director, Emergency Programs Division, North Carolina Department of Agriculture and Consumer Services.

In addition to the foregoing, six at-large members from local government and private industry may be appointed by the Governor and serve terms of two (2) years at the pleasure of the Governor.

Section 2. Duties

The Commission is designated as the State Emergency Response Commission as described in the Emergency Planning and Community Right-to-Know Act of 1986 as enacted by the United States Congress (hereinafter, the "Act") and shall perform all duties required of it under the Act, including, but not limited to, the following:

- a. Appoint local emergency planning committees described under Section 301(c) of the Act and supervise and coordinate the activities of such committees.
- b. Establish procedures for reviewing and processing requests from the public for information under Section 324 of the Act.
- c. Designate emergency planning districts to facilitate preparation and implementation of emergency plans as required under Section 301(b) of the Act.
- d. Designate additional facilities that may be subject to the Act under Section 302 of the Act.
- e. Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of Section 302 of the Act.
- f. Review the emergency plans submitted by local emergency planning committees and make recommendations to the committees on revisions of the plans that may be necessary to ensure coordination of such plans with emergency response plans of other emergency planning districts.
- g. Review plans for preventing, preparing, responding, and recovering from acts of terrorism.

Section 3. Administration

- a. The Department of Crime Control and Public Safety shall provide administrative support and staff as may be required.

- b. Members of the Commission shall serve without compensation but may receive reimbursement for travel and subsistence expenses in accordance with state guidelines and procedures and contingent on the availability of funds.

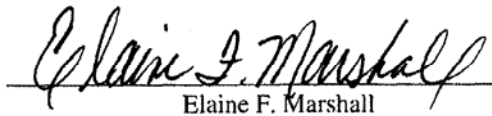
This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 85 GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

WHEREAS, the Hispanic/Latino community plays a vital role in the economy of North Carolina; and

WHEREAS, North Carolina has experienced a tremendous increase of Hispanic/Latino residents into the state; and

WHEREAS, the Hispanic/Latino community is contributing to the economic development and progress of the state by working in different sectors of the labor market and by participating in civic affairs; and

WHEREAS, many unique challenges confront the Hispanic/Latino community as they attempt to access housing, health care, and employment services; and

WHEREAS, the state should promote and encourage collaboration and collaborative planning and delivery of services among state agencies that serve the Hispanic/Latino community.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Membership Composition

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of 15 voting members who shall serve at the pleasure of the Governor. In addition to the 15 appointed members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;

- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Governor's Senior Advisor on Community Affairs;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. The Commissioner of Labor;
- c. The Attorney General,
- d. The Superintendent of Public Instruction; and
- e. The Honorary Consul of Mexico.

Section 2. Meetings

The Advisory Council shall meet quarterly or at the call of the chair. The chair shall set the agenda for the Advisory Council's meetings. The Advisory Council may establish such committees or other working groups as are necessary to assist in performing its duties.

Section 3. Duties

The Advisory Council shall have the following duties:

- a. Advise the Governor on issues relating to the Hispanic/Latino community in North Carolina;
- b. Support state efforts toward the improvement of race and ethnic relations;
- c. Provide a forum for the discussion of issues concerning the Hispanic/Latino community in North Carolina;
- d. Promote cooperation and understanding between the Hispanic/Latino community, the general public, the state, federal, and local governments; and
- e. Perform other duties as directed by the Governor.

Section 4. Administration

Support staff for the Advisory Council shall be provided by the Governor's Office and other cabinet departments as directed by the Governor. Members shall serve without

compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with North Carolina General Statutes §§138-5, 138-6, and 120-3.1

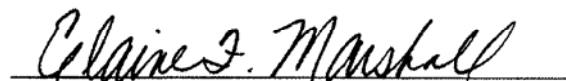
This executive order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 86 STATEWIDE FLEXIBLE BENEFITS PROGRAM

WHEREAS, State employees are an important resource to State government; and

WHEREAS, the State needs to provide a uniform competitive compensation package that includes an up-to-date benefits program in order to maintain its competitive edge with businesses and other states in its region; and

WHEREAS, the State needs to provide the same tax-advantaged benefits to all State employees, regardless of the agency, department, or university where they work; and

WHEREAS, the reasonable cost of administering an efficiently designed flexible benefits program could be recovered by the savings associated with such a program;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Policy.

A statewide employee flexible benefits coordination effort is hereby formalized for the purpose of administering these benefits to employees and to promote the development and maintenance of a competitive compensation package for all State employees.

Section 2. Administration.

There is created within the Office of State Personnel a Statewide Employee Flexible Benefits Program (SEFBP). The State Personnel Director shall be responsible for central flexible

benefits coordination for all State employees. The administration of the statewide flexible benefits plan shall become the responsibility of SEFBP. This program shall begin the process of assessing the flexible benefits plan design, administrative procedures, administrative capabilities, and communications needs for the implementation of a comprehensive statewide flexible benefits plan. These responsibilities include, but are not limited to the following:

- a. implementing the Statewide Flexible Benefits Plan;
- b. administering contracts for supplemental insurance carriers and third party administrators for spending accounts and premium conversion plans participating in the SEFBP;
- c. coordinating administration of spending accounts;
- d. coordinating enrollment and communication efforts concerning the SEFBP and other benefit programs;
- e. coordinating the Statewide Flexible Benefits Advisory Committee; and
- f. speaking on behalf of State government flexible benefits in the Legislature.

Section 3. Statewide Flexible Benefits Advisory Committee.

There is hereby established a Statewide Flexible Benefits Advisory Committee (FBAC) for the purpose of assisting the State in developing and maintaining an effective flexible benefits plan for State employees. The FBAC shall make recommendations to the State Personnel Director concerning the administration of the Flexible Benefits Plan and the components of the flexible benefits package for State employees.

Section 4. Duties of the FBAC.

The FBAC shall be responsible for the following:

- a. assisting the SEFBP in developing administrative functions;
- b. reviewing existing flexible benefit programs in State government;
- c. recommending pre-tax benefits to be included in the SEFBP;
- d. assisting in reviewing contracts and administering spending accounts; and

- e. undertaking other functions as necessary.

Section 5. Membership.

The membership of the FBAC shall consist of 14 members and three ex-officio members.

Members shall be appointed to a three-year staggered term. Members are as follows:

- a. a representative from the State Controller's Office;
- b. a representative from the State Treasurer's Office;
- c. a representative from the State Budget Office;
- d. a representative from the Attorney General's Office;
- e. a representative from the State Health Benefits Office;
- f. a representative from the Administrative Office of the Courts;
- g. a representative from the Department of Environment and Natural Resources;
- h. a representative from the University of North Carolina System;
- i. a representative from the State Employees Association;
- j. a representative from the Department of Health and Human Services;
- k. a representative from the Department of Transportation
- l. a representative from the Department of Correction; and
- m. two representatives of the private sector.

One representative each from the Department of Public Instruction and the Community College System shall serve as voting members. The SEFBP Manager shall serve as a voting ex officio member and provide support staff as required.

The Director of the Office of State Personnel shall appoint a Chair from among the membership for a one-year term.

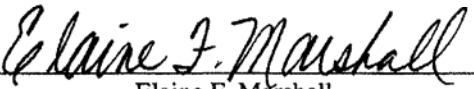
This Executive Order is effective immediately and shall remain in effect until rescinded by the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of September 2005.



Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 87

AMENDING EXECUTIVE ORDER NO. 81 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

WHEREAS, the Governors of Florida, Mississippi, Alabama, and Louisiana have proclaimed that a State of Emergency and a State of Disaster exists in these states due to Hurricane Katrina and thereby, have requested that States, through which property carrying vehicles regulated by size and weight laws, allow exemptions of said laws when vehicles traveling through such states are bearing equipment and supplies to provide relief to the disaster stricken areas in the above States; and;

WHEREAS, under the provisions of N.C.G.S. §§166A-4 and 166A-6(c)(3), the Governor of North Carolina, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies to relieve Florida, Mississippi, Alabama, and Louisiana's grief stricken areas must adhere to the registration requirements of N.C.G.S. §20-86.1 and N.C.G.S. §20-382, fuel tax requirements of N.C.G.S. §105-449.47, and the size and weight requirements of N.C.G.S. §20-116 and N.C.G.S. §20-118. I have further found that citizens in those states have suffered losses and the imminent threat of further widespread damage within the meaning of N.C.G.S. §166-A-4(3) will occur;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED**;

Section 1. The Department of Crime Control and Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. §20-116 and N.C.G.S. §20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting food, fuel, equipment, and supplies along North Carolina's interstate roadways en route to Florida, Mississippi, Alabama, and Louisiana's grief stricken areas.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration and fee requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. §20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- (D) The fees listed in N.C.G.S. §20-119 for an annual permit and a single trip permit to transport mobile homes only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. §20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the annual permit from the North Carolina Department of Transportation, and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements. Movement of mobile homes required to obtain a permit shall be granted travel from sunrise to sunset seven (7) days a week.
- (E) The requirement of a permit and travel restrictions shall be waived for transporters moving mobile homes that do not exceed 14' wide and/or 14' high being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters operating under this exemption shall be allowed travel on interstate routes 24 hours a day seven days a week. However, transporters moving mobile homes not exceeding 14'

wide and/or 14' high are required to have escort vehicles as would be required under normal conditions. Transporters moving mobile homes under this section are exempted from the requirement to enter Weigh Stations as required under N.C.G.S. §20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements.

Section 4. The size and weight exemption for vehicles will be allowed on all North Carolina interstate highways **only**.

Section 5. The waiver of regulations under 49 CFR (Federal Motor Carrier Safety Regulations) issued by the states of Florida, Mississippi, Alabama, and Louisiana **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 60 days or the duration of the emergency, whichever is less.

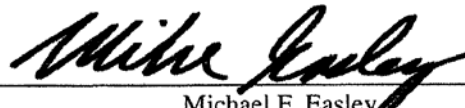
Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in such a manner, as to best accomplish the implementation of this rule without endangering the motoring public in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Katrina.

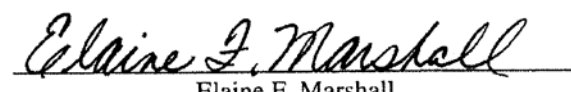
This executive order is effective immediately and shall remain in effect for ninety (90) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 8th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 88 PROCLAMATION OF STATE OF EMERGENCY DUE TO HURRICANE OPHELIA

WHEREAS, I have determined that a state of emergency, as defined in N.C.G.S. §§ 166A-5 and 14-288.1(10), exists in the State of North Carolina, due to the approach and proximity of Hurricane Ophelia, which began on September 10, 2005.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. §§ 166A-5 and 14-288.15, I, therefore, proclaim the existence of a state of emergency in the State.

Section 2. I hereby order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. I hereby delegate to Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the North Carolina General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the State.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the

general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This proclamation shall become effective immediately and shall continue until it is terminated in writing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this 10th day of September 2005



Mike Easley
MICHAEL F. EASLEY

GOVERNOR

ATTEST:

Elaine F. Marshall
ELAINE F. MARSHALL

SECRETARY OF STATE

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 89 REPLACING EXECUTIVE ORDER NO. 52 CONCERNING FOOD SAFETY AND DEFENSE TASK FORCE

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Establishment.

The North Carolina Food Safety and Defense Task Force (formerly known as the "North Carolina Food Safety and Security Task Force") is hereby established.

Section 2. Purpose.

The purpose of the Task Force is to coordinate interagency and public-private efforts to enhance protection of the State's food supply system and its agricultural industry.

Section 3. Membership.

The Task Force shall consist of the following members, or their designees:

- (1) the Commissioner of Agriculture,
- (2) the Secretary of Environment and Natural Resources,
- (3) the Secretary of Health and Human Services,
- (4) the Secretary of Crime Control and Public Safety,
- (5) the Chancellor of North Carolina State University,
- (6) the Chancellor of University of North Carolina at Chapel Hill, and
- (7) representatives of other government agencies, private industry, and other public members invited to participate by the Task Force. The Commissioner of Agriculture and the Secretary of Health and Human Services shall serve as co-chairs of the Task Force.

Section 4. Duties.

The North Carolina Food Safety and Defense Task Force shall:

- (1) Partnering with state and federal agencies to conduct focused studies of the vulnerability of the State's food system to criminal and terrorist acts and make recommendations for
 - a. improving safety and security of the food supply system,
 - b. reducing terrorism threat measures,
 - c. improving food safety and defense mitigation and response plans, and
 - d. training for key stakeholders in the State's food supply system.

- (2) Recommending legislation needed to improve the ability of State departments and agencies to protect the safety and defense of the State's food supply and the agricultural industry base, including legislation to protect sensitive and proprietary information of the State's food supply system, safety and defense vulnerability information, and defense plans, that, if compromised, would heighten the exposure of the State's food supply system to criminal or terrorist acts.
- (3) Recommending budget, staffing, and resource adjustments necessary to improve the capability of State departments and agencies to protect the safety and defense of the State's food supply system and agricultural industrial base.

Section 5. Reporting.

The Food Safety and Defense Task Force shall prepare an annual report no later than the 15th of December each year. This report shall include any recommendations, including proposed legislation, for changes in laws, rules, and programs that the Task Force determines to be appropriate to enhance food safety and defense in the State.

Section 6. Funding.

The Office of State Budget and Management shall assist the Task Force in its efforts to obtain State and Federal funding necessary to carry out its duties.

Section 7. Other Executive Orders

All other executive orders or portions of executive orders inconsistent herewith are hereby rescinded. This order specifically replaces Executive Order No. 52 dated September 12, 2003.

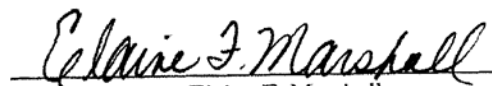
The executive order shall be effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 12th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 90 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE OPHELIA

WHEREAS, I have proclaimed that a State of Emergency exists in North Carolina due to Hurricane Ophelia, and

WHEREAS, under the provisions of N.C.G.S. §§166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing FOOD, FUEL, EQUIPMENT, AND SUPPLIES to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. §20-86.1 and N.C.G.S. §20-382, fuel tax requirements of N.C.G.S. §105-449.47, and the size and weight requirements of N.C.G.S. §20-116 and N.C.G.S. §20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. §166-A-4(3),

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED**;

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive the requirements of 49 CFR Parts 390-

398 (Federal Motor Carrier Safety Regulations) and certain size and weight restrictions and penalties therefore arising under N.C.G.S. §20-116 and N.C.G.S. §20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting FOOD, FUEL, EQUIPMENT, AND SUPPLIES along North Carolina roadways to our grief stricken counties.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. §20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. §20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. §136-72.

Section 5. The waiver of regulations under 49 CFR Parts 390-398 (Federal Motor Carrier Safety Regulations) **does not apply** to the Controlled Substances and Alcohol use and testing requirements (49 CFR Part 382), the Commercial Drivers License requirements (49 CFR Part 383 and N.C.G.S. §20-37.12) and the Financial Responsibility (Insurance) Requirements (49 CFR Part 387 and N.C.G.S. §20-309(a1)). This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Ophelia.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 15th day of September, 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 91 GOVERNOR'S TASK FORCE FOR HEALTHY CAROLINIANS

WHEREAS, North Carolina is blessed with some of the finest medical facilities and medical care found anywhere in the world; and

WHEREAS, despite these resources, many North Carolinians die or are disabled prematurely every year due to preventable causes, exacting an enormous economic, social and personal toll upon our state; and

WHEREAS, most premature deaths and disabilities are preventable by relatively simple changes in behavior that would reduce the causes of these deaths and disabilities, including diabetes, stroke, and obesity; and

WHEREAS, in order to provide to the citizens of our state a way to prevent these tragic losses, a realistic plan needs to be developed that communities and individual citizens may implement to improve their health status and avoid premature death and disability; and

WHEREAS, this plan must promote the advantages of healthy living and disease prevention.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Establishment and Rescission of Prior Orders

The Governor's Task Force for Healthy Carolinians (Governor's Task Force) is hereby established. The Governor's Task Force established herein is the successor organization to the Governor's Task Force on Health Objectives for the Year 2000, established in Executive Order No. 56 issued by Governor James B. Hunt, Jr. on July 13, 1994. This Executive Order replaces Executive Order No. 13 dated October 9, 2001.

Section 2. Membership

The Governor's Task Force shall have 37 members. The Governor shall appoint 33 members, including the Chair. The Vice Chair shall be elected by the Governor's Task Force. The President Pro Tempore of the Senate shall be invited to appoint two Members of the Senate, one of whom serves on the Public Health Study Commission. The Speaker of the House of Representatives shall be invited to appoint two members of the House, one of whom serves on the Public Health Study Commission. Each member of the Task Force shall be appointed for terms of four years, and will serve until appointment of a successor. A vacancy on the Governor's Task Force shall be filled by the original appointing authority.

The Governor shall appoint representatives from the following:

- a. Secretary, Department of Health and Human Services, or designee;
- b. Association of North Carolina Boards of Health;
- c. North Carolina Hospital Association;
- d. North Carolina Medical Society;
- e. North Carolina Academy of Family Physicians;
- f. North Carolina Association of Local Health Directors;
- g. Dean, School of Public Health, University of North Carolina-CH, or designee;
- h. North Carolina Citizens for Business and Industry;
- i. North Carolina Commission on Indian Affairs;
- j. North Carolina Association of County Commissioners;
- k. National Association for the Advancement of Colored People;
- l. Mental Health/Developmental Disabilities/Substance Abuse Services Division, DHHS;
- m. State Health Director, Division Of Public Health, DHHS;
- n. Director, Office of Research, Demonstrations and Rural Health Development, DHHS or designee;
- o. North Carolina Dental Society;
- p. North Carolina Nurses' Association
- q. Old North State Medical Society;
- r. North Carolina Public Health Association;

- s. Commissioner, NC Department of Agriculture and Consumer Services, or designee;
- t. Office of Minority Health, DHHS;
- u. Superintendent of Public Instruction, or designee;
- v. Governor's Council on Physical Fitness and Health;
- w. Eleven at-large members, including a representative of local education, religious organization, older adults, and non-profit organizations.

Section 3. Functions

- a. The Governor's Task Force shall meet regularly at the call of the Chair.
- b. The Governor's Task Force will advise the State Health Director and the Secretary of the Department of Health and Human Services on policies, programs and resources needed to improve the public's health in North Carolina.
- c. The Governor's Task Force shall have the responsibility to periodically review the state health objectives, make amendments as necessary, and report progress toward achieving the objectives to the Governor, Secretary of DHHS, and the State Health Director.
- d. The Governor's Task Force shall have the power to designate local Healthy Carolinians Task Forces, comprised of representatives of public and private organizations, and community members and leaders, which support the goals of the Governor's Task Force.
- e. The Governor's Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor's Task Force.
- f. The Governor's Task Force shall review the Preventative Health and Health Services Block Grant annually and carry out the necessary functions of the advisory committee as required by federal law.

Section 4. Administration

- a. Administrative support for the Governor's Task Force shall be provided by the Department of Health and Human Services.

- b. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor's Task Force in carrying out the provisions of this Order.

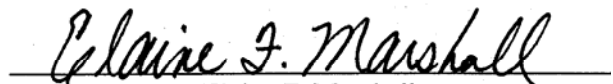
This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 27th day of September 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 92 EXTENDING EXECUTIVE ORDER NOS. 48, 12, and 58

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Executive Order No. 48, Concerning the State Commission on National and Community Service (now known as the "North Carolina Commission on Volunteerism and Community Service"), as previously extended and as previously amended by Executive Order No. 174 issued by Governor James B. Hunt, Jr. on November 8, 2000, extended by Executive Order No. 12 issued on October 9, 2001, and extended by Executive Order No. 58 issued on May 30, 2005, is hereby extended until December 31, 2007.

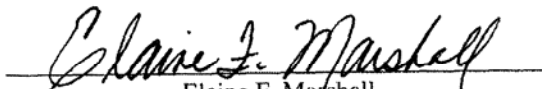
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 21st day of November 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 93
AMENDING EXECUTIVE ORDER NO. 85
GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS**

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1 of Executive Order No. 85 issued by Michael F. Easley on September 7, 2005, is hereby amended as follows:

Section 1. Membership Composition.

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of 15 voting members who shall serve at the pleasure of the Governor. In addition to the 15 appointed members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;
- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Secretary of the Department of Revenue;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. The Commissioner of Labor;
- c. The Attorney General,
- d. The Superintendent of Public Instruction; and
- e. The Honorary Consul of Mexico.

Except as amended herein, all provisions of Executive Order No. 85 shall remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 23rd day of November 2005.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

**EXECUTIVE ORDER NO. 94
PROCLAMATION OF CONTINUING STATE OF EMERGENCY
DUE TO HURRICANES KATRINA AND OPHELIA**

WHEREAS, on September 3, 2005, I declared that a State of Emergency existed in the State of North Carolina because of the devastation brought about by Hurricane Katrina; and

WHEREAS, on September 10, 2005, I declared that a State of Emergency existed in the State of North Carolina because of the devastation brought about by Hurricane Ophelia; and

WHEREAS, because of the disruptions of the U.S. fuel supply and distribution system brought about by Hurricanes Katrina and Ophelia, heating and home weatherization costs for all North Carolina consumers are projected to be unusually high this winter, resulting in thousands of low-income North Carolina families having insufficient funds to adequately heat their homes.

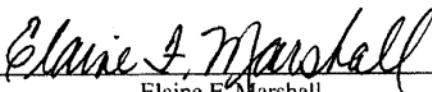
NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina and as provided in Chapter 166A of the North Carolina General Statutes and N.C.G.S. §14-288.1, I have determined that a State of Emergency continues to exist in North Carolina because thousands of North Carolina low-income families will be unable to adequately heat their homes this winter due to the expected unusually higher costs of fuel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of this State of North Carolina at the Capitol in Raleigh this 28th day of November 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 95

AMENDING EXECUTIVE ORDER NO. 87 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

Executive Order No. 87, which amended Executive Order No. 81 pertaining to emergency relief for damage caused by Hurricane Katrina, is hereby amended to apply only to the transport of mobile homes under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort.

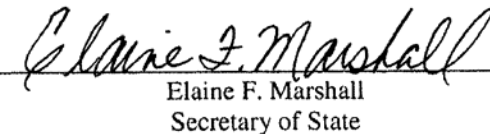
This executive order shall remain in effect for 30 days.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 7th day of December 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 96 EMERGENCY RELIEF FOR DAMAGE CAUSED BY ICE/SNOW STORM

WHEREAS, I have proclaimed that a State of Emergency and threatened Disaster exists in North Carolina due to the recent ICE/SNOW STORM on December 15, 2005, thereby, justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations Hours of Service); and

WHEREAS, under the provisions of N.C.G.S. §166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing FOOD, FUEL, EQUIPMENT, SUPPLIES and UTILITIES to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. §20-86.1 and N.C.G.S. §20-382, fuel tax requirements of N.C.G.S. §105-449.47, and the size and weight requirements of N.C.G.S. §20-116 and N.C.G.S. §20-118; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. §166-A-4(3),

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED;

Section 1. The Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. §20-116 and N.C.G.S. §20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting FOOD, FUEL, EQUIPMENT, SUPPLIES, and EQUIPMENT to relieve our grief stricken counties

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties **have not been waived** under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.

Section 3. Vehicles referenced under Section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. §105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. §105-449.45(a)(1) applies.
- (B) The registration requirements under N.C.G.S. §20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. §20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. §136-72.

Section 5. The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations Hours of Service) **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with the Winter Storm.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 16th day of December 2005.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 97

EXTENDING EXECUTIVE ORDER NO. 95 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

Executive Order No. 95 and 87, which amended Executive Order No. 81 pertaining to emergency relief for damage caused by Hurricane Katrina and amended to apply only to the transport of mobile homes under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort is hereby extended until January 31, 2006.

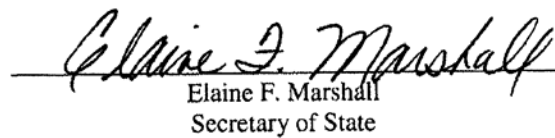
This executive order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 5th day of January 2006.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 98 NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED THAT:

Section 1. Establishment.

The North Carolina State Health Coordinating Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- a. serve as a forum for hearing regional concerns and recommendations relating to health planning;
- b. compile a list of state health needs and advise the Department of Human Resources;
- c. advise the Department of Human Resources on issues related to state health needs, giving attention to local, regional, and statewide needs.
- d. review and comment on contents of documents related to health planning and make recommendations concerning them to the Secretary of Human Resources and the Governor;
- e. advise the Department of Human Resources on cost-effective mechanisms for achieving health needs;

- f. prepare the Annual State Medical Facilities Plan and present the plan to the Governor.

Section 3. Membership.

The Council shall consist of 27 members who shall be appointed by the Governor as follows:

- a. one member from the academic medical centers;
- b. one member from the area health education centers;
- c. two members from business and industry (at least one individual representing small business and one representing large business);
- d. one member from the health insurance industry;
- e. one member from the North Carolina Association of County Commissioners;
- f. one member from the North Carolina Health Care Facilities Association;
- g. one member from the North Carolina Hospital Association;
- h. one member from the North Carolina Association for Home Care;
- i. one member from the North Carolina Association of Long-Term Care Facilities;
- j. one member from the North Carolina Association of Local Health Directors;
- k. one member from the North Carolina Medical Society;
- l. one member from the North Carolina House of Representatives;
- m. one member from the North Carolina Senate;
- n. one member from the United States Department of Veterans Affairs (non-voting);

- o. twelve at-large members to represent other health professional associations and to ensure regional representation.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years, and nine to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years. Terms shall expire on December 31 and new terms shall begin on January 1.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. §138-5.

Section 7. Chairman.

The Chairman and Vice Chairman of the Council shall be appointed by the Governor. The term of office for the Chairman and Vice Chairman shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet quarterly and at other times at the call of the Chairman or upon written request of at least ten (10) of its members. All business meetings of the Council, its committees and subcommittees, or special task forces shall be open to the public.

Section 9. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.

Section 10.

Executive Order Number 43, as amended by Executive Order 166 of the Hunt Administration and as amended by Executive Orders 16 and 55 of the Easley Administration are hereby rescinded.

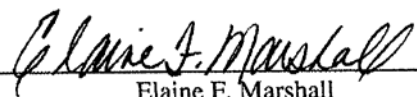
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 18th day of January 2006.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 99 EXTENDING EXECUTIVE ORDER NO. 56, NORTH CAROLINA INTERAGENCY COUNCIL FOR COORDINATING HOMELESS PROGRAMS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED THAT:**

Executive Order No. 56 regarding the North Carolina Interagency Council for Coordinating Homeless Programs is hereby extended for two years.

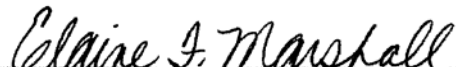
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh this 19th day of January 2006.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 100

EXTENDING EXECUTIVE ORDER NO. 97 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA

Executive Order No. 97, 95 and 87, which amended Executive Order No. 81 pertaining to emergency relief for damage caused by Hurricane Katrina and amended to apply only to the transport of mobile homes under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort is hereby extended until March 17, 2006.

This executive order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 20th day of February 2006.



Mike Easley
Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall *by and thro*
Secretary of State *Rodney Mac*
Chief Deputy
Sec

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 101

TO ESTABLISH THE RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS RULES EFFECTIVE DATE

WHEREAS, North Carolina is committed to providing a safe environment for children and adolescents in mental health residential treatment facilities ("group homes"); and

WHEREAS, the North Carolina Department of Health and Human Services (DHHS) launched an intensive inspection sweep, including the creation of a 50-person team, to make unannounced inspections of all the group homes across the state in January 2005; and

WHEREAS, North Carolina suspended licensing of any additional group homes until the Mental Health Commission acted on new Residential Treatment for Children and Adolescent rules proposed by DHHS; and

WHEREAS, on January 18, 2006, the Mental Health Commission adopted Residential Treatment for Children and Adolescents rules at 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, and on February 16, 2006, the permanent rules were approved by the Rules Review Commission; and

WHEREAS, the rules serve to fill a gap in the staffing and training requirements for residential treatment facilities for children and adolescents; and

WHEREAS, without the rules, there would be no consistent requirements for training residential treatment staff in the proper care of children and adolescents, further endangering the health and safety of those children in group homes; and

WHEREAS, the effective date of the permanent rule under the Administrative Procedures Act, N.C.G.S. §150B-1 et seq., would be July 1, 2006, at the earliest; and

WHEREAS, the Administrative Procedures Act authorizes the Governor, by Executive Order, to make effective a permanent rule upon finding that it is necessary to protect public health, safety, and welfare.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Findings.

It is necessary that the permanent rules regarding residential treatment for children and adolescents, 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, become effective no later than April 3, 2006, in order to provide for the protection of the public health, safety, or welfare.

Section 2. Effective Date of the Rule.

The permanent rule regarding residential treatment for children and adolescents, 10A NCAC 27G .1301 and 10A NCAC 27G .1700, specifically .1701-.1708, is hereby made effective April 3, 2006, pursuant to the Executive Order Exception authority contained in the Administrative Procedures Act, N.C.G.S. §150B-21.3(c).

Section 3. Effective Date

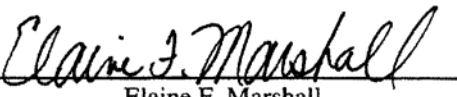
This Executive Order becomes effective April 3, 2006, and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal
of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-seventh day of
March in the year of our Lord two thousand and six, and of the Independence of the United
States of America the two hundred and thirtieth.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 102 CONTINUITY OF OPERATIONS AND CONTINUITY OF GOVERNMENT PLANNING

WHEREAS, natural and man-made emergencies and disasters can hinder the ability of State agencies to deliver essential services to the people of North Carolina; and

WHEREAS, the purpose of Continuity of Operations and Continuity of Government planning is to ensure survival of a constitutional form of government and the continuity of essential State functions under all circumstances; and

WHEREAS, effective State agency planning is vital to the implementation and operation of coordinated and well-managed Continuity of Operations and Continuity of Government plans; and

WHEREAS, it is imperative that all State agencies have in place a viable Continuity of Operations capability which outlines the performance of their essential functions during any emergency or situation that may disrupt normal operations; and

WHEREAS, North Carolina General Statute §147-33.89 requires that each State agency develop a business and disaster recovery plan with respect to information technology, a similar requirement for comprehensive Continuity of Operations and Continuity of Government planning is not part of State law; and

WHEREAS, North Carolina's citizens should expect to receive and State agencies must be prepared to deliver essential services to citizens and customers regardless of situation or circumstance;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED**:

Section 1. Each North Carolina Executive Branch agency (at the Division level) will prepare a Continuity of Operations and Continuity of Government Plan to ensure the State's ability to deliver essential services under any circumstance. Plans will be developed using the North Carolina Continuity of Operations Planning Manual to be published concurrently with this Order. Such plans will incorporate existing business continuity plans for information technology and will include:

1. Identification and listing of Essential Functions
2. Delegations of Authority
3. Orders of Succession
4. Alternate Facilities

5. Interoperable Communications
6. Vital Records
7. Human Capital Management
8. Provisions for Tests, Training, and Exercises
9. Devolution
10. Reconstitution

Section 2. The North Carolina Department of Crime Control and Public Safety (CCPS), Division of Emergency Management is designated as the lead agency for Continuity of Operations plans. CCPS is directed to establish and organize a Continuity of Operations Steering Committee comprised of all executive agency heads or their designated representatives and chaired by the Secretary of CCPS or his designated representative. The Division of Emergency Management is directed to provide advice and assistance to all State agencies developing Continuity of Operations plans.

Section 3. Upon completion of department and division Continuity of Operations plans, CCPS will arrange to prepare a consolidated State Continuity of Operations Plan. The North Carolina Department of Administration will be the lead agency for the consolidated State plan for purposes of procuring and assigning alternate facilities to displaced agencies.

Section 4. By November 1, 2006, each Executive Branch agency will develop a Continuity of Operations Plan, have its plan certified by the head of the agency, and present the plan for review by the Secretary of CCPS in his capacity as State Administrative Agent for Homeland Security. Plans are to be first exercised by May 1, 2007, and updated annually thereafter or as required.

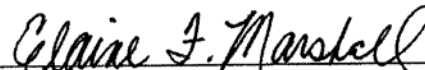
Section 5. State agencies outside the Executive Branch and not directly subject to this order are invited and encouraged to participate in the North Carolina Continuity of Operations planning effort.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this first day of June in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 103
PROCLAMATION OF STATE OF DISASTER FOR THE TOWNS OF
BOILING SPRINGS, TAYLORSVILLE, AND TRYON AND FOR THE CITIES OF
CHERRYVILLE, KINGS MOUNTAIN, NEWTON, SHELBY, AND SALUDA

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§166A-4 and 14-288.1(10), exists in the State of North Carolina, specifically in the Towns of Boiling Springs, Taylorsville, and Tryon and for the Cities of Cherryville, Kings Mountain, Newton, Shelby, and Saluda as a result of the December 14-15, 2005, ice storm in the western part of North Carolina.

WHEREAS, on December 15-16, 2005, the Towns of Boiling Springs, Taylorsville, and Tryon; and the Cities of Cherryville, Kings Mountain, Newton, and Shelby; and on January 19, 2006, Saluda proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria of Type I disaster is met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) the Towns of Boiling Springs, Taylorsville, and Tryon and for the Cities of Cherryville, Kings Mountain, Newton, Shelby, and Saluda declared a local state of emergency pursuant to N.C.G.S. §166A-8 and N.C.G.S. §§14-288.12, 14-288.13 and 14-288.14, and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or meets or exceeds the State infrastructure criteria set out in N.C.G.S. §166A-6.01(b)(2)a; and (4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Pursuant to N.C.G.S. §§166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for the Towns of Boiling Springs, Taylorsville, and Tryon and for the Cities of Cherryville, Kings Mountain, Newton, Shelby, and Saluda are eligible entities, for purposes of reimbursement, as defined by N.C.G.S. § 166A-4(3).

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced towns and cities.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer of the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for the Towns of Boiling Springs, Taylorsville, and Tryon and for the Cities of Cherryville, Kings Mountain, Newton, Shelby, and Saluda issued on July 5, 2006, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of July in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.



Mike Easley

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall

Elaine F. Marshall
Secretary of State

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 104 AMENDING EXECUTIVE ORDER NO. 56, NORTH CAROLINA INTERAGENCY COUNCIL FOR COORDINATING HOMELESS PROGRAMS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED THAT:**

Section 3 of Executive Order No. 56 issued by Michael F. Easley on January 20, 2004, is hereby amended as follows:

Section 3. Chair and Terms of Membership

Each appointment shall be for a term of three years. (All other language within this section is deleted.)

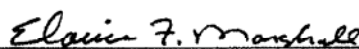
This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirteenth day of July in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall *by and through Rodney Marshall*
Secretary of State *Chief Deputy Secretary*

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 105

TO FACILITATE GOVERNMENT EMPLOYEE ACCESS

WHEREAS, all citizens have the right under both the U.S. Constitution and the Constitution of North Carolina to assemble peaceably, to speak freely, and to petition their government, either individually or through their chosen representatives; and,

WHEREAS, the public interest in efficient and informed state government is served by consultation with persons affected by those functions, including state employees, and

WHEREAS, the public interest is served by ensuring reasonable access for members of employee organizations to their chosen representatives and by providing a fair opportunity for employees to choose their representatives.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

- (1) That all state institutions, departments, bureaus, agencies, or commissions subject to the authority of the Governor shall permit reasonable access to its facilities for the purposes of membership recruitment and consultation with representatives of a domiciled employees' association that has at least 2,000 members in the state, 500 of whom are employees of the State, a political subdivision of the State, or are public school employees;
- (2) That reasonable access shall include requirements that the employee association submit its request for use of state facilities in a timely manner, that requests for use of the same facility be limited to a reasonable number of times each year, that public health and safety not be jeopardized, and that the access be held to the extent possible at the beginning or end of the workday or shift changes or at the lunch hour;
- (3) That representatives of such a domiciled employees' association, who are state employees, shall meet annually with representatives of the Governor regarding issues of mutual concern prior to the annual convening of the General Assembly;

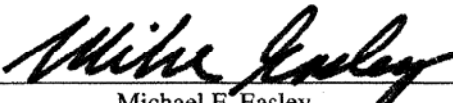
- (4) That any such domiciled employees' association desiring to be included by the provisions of this Order provide to the representatives of the Governor evidence that it meets all of the criteria under this Order; and
- (5) That the provisions of this Order shall not diminish or infringe upon any rights, responsibilities, powers, or duties conferred upon any entity by the Constitution of the State of North Carolina or the North Carolina General Statutes.

The Board of Governors of the University of North Carolina System, the State Board of Community Colleges, local boards of education, and each of heads of the Council of State agencies are encouraged and invited to participate in this Executive Order.

This Executive Order shall take effect immediately and remain in effect until rescinded.

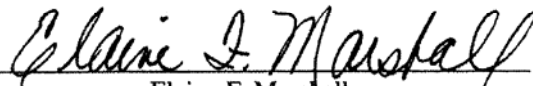
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eighteenth day of August in the year of our Lord two thousand and six, and of the Independence of the United States of America the two hundred and thirtieth.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, AUGUST 27, 2006

I, ELAINE F. MARSHALL, Secretary of State of North Carolina, hereby certify pursuant to G.S. 120-34 that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions and executive orders of the Governor on file in the office of the Secretary of State.

A handwritten signature in black ink, reading "Elaine F. Marshall". The signature is written in a cursive style with a large, stylized 'E' and 'M'.

Secretary of State

**JOINT CONFERENCE COMMITTEE REPORT
ON THE
CONTINUATION, EXPANSION
AND CAPITAL BUDGETS**

June 30, 2006

Senate Bill 1741

**North Carolina General Assembly
2006 Session**

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Budget Reform Statement General Fund Availability	
	FY 2006-07
1 Unappropriated Balance from FY 2005-06 - S.L. 2005-276	117,227,875
2 Net Adjustments - S.L. 2005-345	(4,148,833)
3 Net Adjustments - S.L. 2005-435, S.L. 2005-406, S.L. 2005-376, S.L. 2005-391	(5,826,000)
4 Adjustment From Estimated to Actual 2005-06 Beginning Unreserved Balance	6,133,946
5 Revised Unappropriated Balance Remaining 2005-06	113,386,988
6	
7 Emergency Appropriation for Department of Correction, S.L. 2006-2	(15,000,000)
8 Projected Reversions from FY 2005-06	125,000,000
9 Projected Over Collections from FY 2005-06	1,072,100,000
10 Year End Unreserved Credit Balance before Earmarkings	1,295,486,988
11	
12 Less: Projected Credit to Savings Reserve	(323,871,747)
13 Less: Projected Credit to Repairs and Renovation Reserve Account	(222,229,189)
14 Revised Year End Unreserved Credit Balance	749,386,052
15	
16 Revenues Based on Existing Tax Structure	16,951,416,000
17	
18 Non-tax Revenues	
19 Investment Income	78,700,000
20 Judicial Fees	168,605,271
21 Disproportionate Share	100,000,000
22 Insurance	51,543,813
23 Other Non-Tax Revenues	202,719,921
24 Highway Trust Fund Transfer	252,663,009
25 Highway Fund Transfer	-
26 Subtotal Non-tax Revenues	854,232,014
27	
28 Total General Fund Availability	18,555,034,066
29	
30 Adjustments to Availability: 2006 Session	
31 Adjustment to Baseline Revenue Forecast	698,864,995
32 Reduce Sales Tax from 4.5% to 4.25% - December 1, 2006	(140,100,000)
33 Reduce Top Personal Income Tax Rate from 8.25% to 8.0%-January 1, 2007	(28,600,000)
34 Mill Rehabilitation Income Tax Credit	(2,800,000)
35 529 Savings Plan Income Tax Deduction	(1,000,000)
36 Logging Machinery Sales Tax Exemption	(2,870,000)
37 IRC Update	(5,100,000)
38 Joint Filing Options Under Personal Income Tax	(1,000,000)
39 Railroad Cars Tax Exemption	(400,000)
40 Bill Lee Act Wage Standard - Certain Manufacturers	(800,000)
41 Bill Lee Act Adjustment - Clayton Project	(800,000)
42 Extend Aviation Fuel Tax Credit	(90,000)
43 Extend Real Property Donation Tax Credit	(100,000)
44 Small Business Health Insurance Credit of \$250 - January 1, 2007	(7,200,000)
45 Internet Facility Sales Tax Exemption	(2,250,000)
46 Oyster Tax Credit	(23,000)
47 Gas Cap Reserve	(367,000)
48 Reduce Transfer to Highway Trust Fund	(195,176,407)
49 Adjust Transfer from Insurance Regulatory Fund	455,846
50 Adjust Transfer from Treasurer's Office	281,784
51 Subtotal Adjustments to Availability: 2006 Session	310,926,218
52	
53 Revised General Fund Availability for 2006-07 Fiscal Year	18,865,960,284
54	
55 Less: Total General Fund Appropriations for 2006-07 Fiscal Year	(18,865,960,284)
56	
57 Unappropriated Balance Remaining	-

SUMMARY:

GENERAL FUND APPROPRIATIONS

General Fund Appropriations Fiscal Year 2006-07 2006 Session						
	2006-07 Certified Appropriation	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	Position Changes	2006-07 Revised Appropriation
Education:						
Community Colleges	767,295,886	29,342,577	34,817,450	64,160,027	5.00	831,455,913
Public Education	6,579,807,097	34,783,999	105,160,022	139,944,021	5.00	6,719,751,118
University System	2,120,397,081	126,039,967	2,617,930	128,657,897	511.95	2,249,054,978
Total Education	9,467,500,064	190,166,543	142,595,402	332,761,945	521.95	9,800,262,009
Health and Human Services:						
Office of the Secretary	118,880,919	(63,346,653)	8,183,417	(55,163,236)	3.00	63,717,683
Aging Division	29,495,139	5,535,886	0	5,535,886	8.00	35,031,025
Blind and Deaf / Hard of Hearing Services	9,681,220	0	75,000	75,000	0.00	9,756,220
Child Development	267,356,799	28,049,617	1,012,291	29,061,908	10.00	296,418,707
Education Services	34,281,895	778,548	218,235	996,783	23.00	35,278,678
Facility Services	15,959,466	0	200,000	200,000	0.00	16,159,466
Medical Assistance	2,751,209,159	(132,150,000)	24,600,000	(107,550,000)	0.00	2,643,659,159
MH/DD/SAS	602,556,655	53,733,357	6,505,000	60,238,357	93.00	662,795,012
NC Health Choice	51,882,902					51,882,902
Public Health	150,814,496	16,859,242	1,276,000	18,135,242	144.00	168,949,738
Social Services	190,679,285	15,219,957	462,607	15,682,564	0.00	206,361,849
Vocational Rehabilitation	42,142,193			0		42,142,193
Total Health and Human Services	4,264,940,128	(75,320,046)	42,532,550	(32,787,496)	281.00	4,232,152,632
Justice and Public Safety:						
Correction	1,048,492,502	17,657,493	17,254,211	34,911,704	153.00	1,083,404,206
Crime Control & Public Safety	35,153,488	2,024,324	3,929,956	5,954,280	16.00	41,107,768
Judicial Department	345,760,410	16,174,876	10,916,836	27,091,712	271.75	372,852,122
Judicial - Indigent Defense	88,648,414	1,657,191	5,025,938	6,683,129	1.00	95,331,543
Justice	78,697,271	1,435,897	3,270,941	4,706,838	16.00	83,404,109
Juvenile Justice & Delinquency Prevention	138,873,166	2,961,819	492,701	3,454,520	58.00	142,327,686
Total Justice and Public Safety	1,735,625,251	41,911,600	40,890,583	82,802,183	515.75	1,818,427,434

General Fund Appropriations						
Fiscal Year 2006-07						
2006 Session						
	2006-07 Certified Appropriation	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	Position Changes	2006-07 Revised Appropriation
Natural And Economic Resources:						
Agriculture and Consumer Services	51,032,884	2,224,113	1,359,449	3,583,562	31.00	54,616,446
Commerce	36,728,265	2,550,483	33,817,000	36,367,483	9.00	73,095,748
Commerce - State Aid	11,722,085	546,000	6,657,138	7,203,138	0.00	18,925,223
Environment and Natural Resources	168,451,089	2,364,324	12,487,638	14,851,962	25.00	183,303,051
DENR - Clean Water Mgmt. Trust Fund	100,000,000	0	0	0	0.00	100,000,000
Labor	14,434,925	413,894	200,000	613,894	3.50	15,048,819
NC Biotechnology Center	10,583,395	2,000,000	500,000	2,500,000	0.00	13,083,395
Rural Economic Development Center	25,052,607	(500,000)	0	(500,000)	0.00	24,552,607
Total Natural and Economic Resources	418,005,250	9,598,814	55,021,225	64,620,039	68.50	482,625,289
General Government:						
Administration	58,818,473	1,875,856	1,498,683	3,374,539	22.00	62,193,012
Auditor	10,840,918	57,564	0	57,564	0.00	10,898,482
Cultural Resources	62,917,147	1,374,034	4,046,982	5,421,016	31.00	68,338,163
Cultural Resources - Roanoke Island	1,783,374	0	0	0	0.00	1,783,374
General Assembly	46,965,432	0	38,284	38,284	0.00	47,003,716
Governor	5,344,528	100,000	0	100,000	0.00	5,444,528
NC Housing Finance Agency	4,750,945	0	17,437,500	17,437,500	0.00	22,188,445
Insurance	28,110,582	425,846	30,000	455,846	5.00	28,566,428
Insurance - Worker's Compensation Fund	4,500,000	0	0	0	0.00	4,500,000
Lieutenant Governor	753,037	88,433	0	88,433	1.00	841,470
Office of Administrative Hearings	2,969,712	269,578	11,789	281,367	2.00	3,251,079
Revenue	80,673,250	513,294	766,488	1,279,782	1.00	81,953,032
Secretary of State	9,369,633	441,217	26,850	468,067	5.25	9,837,700
State Board of Elections	5,069,307	585,044	201,576	786,620	31.00	5,855,927
State Budget and Management	6,021,795	240,438	169,500	409,938	3.00	6,431,733
State Budget and Management -- Special	5,111,429	755,232	598,021	1,353,253	0.00	6,464,682
State Controller	10,044,511	0	0	0	0.00	10,044,511
Treasurer - Operations	8,295,843	281,784	0	281,784	0.00	8,577,627
Treasurer - Retirement / Benefits	8,651,457	514,000	0	514,000	0.00	9,165,457
Total General Government	360,991,373	7,522,320	24,825,673	32,347,993	101.25	393,339,366
Transportation	0	0	0	0		0

General Fund Appropriations						
Fiscal Year 2006-07						
2006 Session						
	2006-07 Certified Appropriation	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	Position Changes	2006-07 Revised Appropriation
Statewide Reserves and Debt Service:						
Debt Service:						
Interest / Redemption	619,291,140	0	(50,000,000)	(50,000,000)		569,291,140
Federal Reimbursement	1,616,380	0	0	0		1,616,380
Subtotal Debt Service	620,907,520	0	(50,000,000)	(50,000,000)	0.00	570,907,520
Statewide Reserves:						
Compensation Increases	235,185,705	673,523,862	14,970,657	688,494,519		923,680,224
Reserve for Contingent Appropriations	85,000,000			0		85,000,000
Salary Adjustment Fund: 2005-07 Biennium	4,500,000			0		4,500,000
Salary Adjustment Fund: 2004-05 Fiscal Year	4,500,000			0		4,500,000
Teachers' & State Employees Retirement Cont	13,810,800	27,107,200	0	27,107,200		40,918,000
Retirement System Payback	0	0	30,000,000	30,000,000		30,000,000
Death Benefit Trust	12,899,200			0		12,899,200
Disability Income Plan	6,586,500			0		6,586,500
State Health Plan	142,728,000			0		142,728,000
Contingency and Emergency	5,000,000			0		5,000,000
Information Technology Rate Adjustments	(2,300,000)			0		(2,300,000)
Information Technology Fund	8,025,000	7,559,349	34,527,880	42,087,229	52.75	50,112,229
Job Development Incentive Grants Reserve	12,400,000			0		12,400,000
Reserve for Heating and Cooling Assistance		0	10,000,000	10,000,000		10,000,000
Reserve for Legal Expenses			1,065,710	1,065,710		1,065,710
Trust Fund for MH/DD/SAS			14,390,000	14,390,000		14,390,000
State Emergency Response Account		0	20,000,000	20,000,000		20,000,000
Pending Ethics Legislation		401,871	21,000	422,871	4.00	422,871
Subtotal Statewide Reserves	528,335,205	708,592,282	124,975,247	833,567,529	56.75	1,361,902,734
Total Reserves and Debt Service	1,149,242,725	708,592,282	74,975,247	783,567,529	56.75	1,932,810,254
Total General Fund for Operations	17,396,304,791	882,471,513	380,840,680	1,263,312,193	1,545.20	18,659,616,984

General Fund Appropriations							
Fiscal Year 2006-07							
2006 Session							
	2006-07 Certified Appropriation	Recurring Adjustments	Nonrecurring Adjustments	Net Changes	Position Changes	2006-07 Revised Appropriation	
Other General Fund Expenditures:							
Capital Improvements	0	0	206,343,300	206,343,300		206,343,300	
Repairs and Renovations	0			0		0	
Total Other General Fund Expenditures	0	0	206,343,300	206,343,300	0.00	206,343,300	
Total General Fund Budget	17,396,304,791	882,471,513	587,183,980	1,469,655,493	1,545.20	18,865,960,284	

EDUCATION
Section F

Public Education

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$6,579,807,097

Budget Changes		
A. Adjustments & Transfers		
1 Average Daily Membership (ADM)	\$76,299,816	R
Revises projected increase in ADM for FY 2006-07 to reflect 18,363 more students than originally projected. Dollar amount of adjustment includes increases in all position, dollar, and categorical allotments.		
Total funded ADM for FY 2006-07 is 1,435,475, an increase of 38,103 over FY 2005-06.		
Due to a projected increase in ninth grade ADM receipts from the Highway Fund budgeted for Driver's Education will increase by \$457,971.		
2 Budgeted Average Salary	(\$71,776,440)	R
Revises budgeted funding for certified personnel salaries based on actual salary data from May 2006. Adjustment does not reduce any salary paid to certified personnel.		
3 Budget Receipts from NC Education Lottery for Class Size Reduction	(\$127,864,291)	R
Budgets receipts from NC Education Lottery Fund to support class size reduction in accordance with statute.		
4 Exceptional Children	(\$6,255,530)	R
Revises budgeted funding for children with special needs to reflect actual April 1, 2006 headcount. Continuation budget was based on projected headcount. Adjustment does not reduce funding per student.		
5 Transfer More at Four Program and Office of School Readiness		
Effective July 1, 2006, transfers the More at Four Program including all 22 existing positions, and the Office of School Readiness to the Department of Public Instruction (DPI). These transfers shall have all the elements of a Type I transfer, as defined by G.S. 143A-6.		
6 Budget Receipts from NC Education Lottery for More at Four		
Budgets \$66,646,653 in receipts from NC Education Lottery Fund to support the More at Four program in accordance with statute. In addition, budgets an additional \$17,989,056 from lottery proceeds to support the following program expansion: creation of 3,200 additional program slots, increased funding of \$200 per slot for all 18,653 slots, and establishment of five new receipt-supported staff positions (More at Four: Educational Development & Planning Consultant II, Educational Consultant II, and Education Processing Assistant; DPI: Accounts Payable Clerk I, and Accountant I) who will perform monitoring, technical assistance, and financial management functions.		

Conference Report on the Continuation, Capital and Expansion Budgets

FY 06-07

7 Adjust Projection of Receipts from Civil Penalties & Forfeitures	\$30,000,000	R
Provides funds to address adjusted projection of collections in the Civil Penalties & Forfeitures Fund. Revised amount of receipts budgeted from the Fund to support public schools operations in 2006-07 is \$77,500,000.		
8 Budget Receipts from Teaching Fellows Trust Fund	(\$340,657)	R
Budgets receipts from Teaching Fellows Trust Fund to support administration of Teaching Fellows Program. Reduces General Fund appropriation to Public School Forum accordingly.		
B. Expansion: State Public School Fund		
9 Restore Base Budget Funding	\$44,291,248	R
Restores full base budget funding by eliminating the recurring LEA Discretionary Reduction.		
10 Low Wealth Supplemental Funding	\$41,893,391	R
Provides full funding for the Low Wealth Supplemental Funding allotment.		
11 Disadvantaged Student Supplemental Funding (DSSF)	\$27,002,670	R
Provides additional supplemental funding to be distributed to all LEAs to support their efforts to serve students who are the most at risk of academic failure. Beginning in 2006-07, all DSSF funds will be distributed based on a formula that takes into account each LEA's relative need. The sixteen LEAs receiving DSSF funds in 2005-2006 will receive no less than the DSSF amount allotted in 2005-2006.		
12 Evaluate Effectiveness of DSSF and Low Wealth	\$500,000	NR
Provides additional funds to support comprehensive evaluation of: (i) the extent to which LEAs use DSSF and Low Wealth supplemental allotments to improve outcomes for students at-risk of school failure, and (ii) the extent to which DPI supports the LEAs in using DSSF and other supplemental allotments efficiently and effectively.		
13 Exceptional Children	\$1,000,000	R
Increases funding per student by \$5.87 for the 170,240 students in the funded headcount of children with special needs. Revised funding per student is \$2,972.52.		
14 ABC Bonuses	\$90,000,000	NR
Funds ABC bonuses for schools that met or exceeded expected growth in the 2005-06 school year.		
15 Learn and Earn Initiative	\$8,232,388	R
Expands the Learn and Earn initiative into an additional 19 high schools (bringing the total to 34). Provides planning grants to 20 additional high schools.		
	\$1,433,360	NR

16 Small Specialty High Schools	\$3,805,970	R
Expands the small specialty high school initiative by creating 21 new small specialty schools-within-schools at 11 new sites (bringing the respective totals to 32 schools at 19 sites). Provides planning grants at 10 small schools that intend to design instruction around the following curricular: science, technology, engineering, and/or math (STEM). Provides \$261,680 to support four months of principal salary for each planning site prior to becoming operational in the 2007-08 school year. Any implementation grants for STEM schools shall come from non-State sources.	\$661,680	NR
17 Virtual High School	\$2,588,722	R
Provides funds to support implementation of the NC Virtual Public Schools initiative. Funds provide for seven administrative and support positions or contracted employees, 22 three-month positions, and both one-time and ongoing operating support.	\$189,132	NR
18 School Connectivity	\$6,000,000	NR
Provides funds to be used to upgrade public school connectivity as part of efforts to establish a comprehensive PreK-20 NC Regional Education Network. Funds shall be used to expand the number of public schools serving pre-kindergarten through grade 12 with broadband connectivity; provide "last mile" connectivity to public schools and enhance development of regional broadband networks; infuse technology into schools' instructional efforts; maximize the use of e-Rate; and revise School Technology Plans. Funds that are not expended by June 30, 2007 shall be carried forward for expenditure in FY 2007-08.		
Up to \$300,000 may be transferred to the Office of the Governor to establish NC Virtual within the Education Cabinet. These funds may be used to contract for services to coordinate e-learning activities across all State educational agencies.		
19 Literacy Coaches	\$4,767,400	R
Provides funds to support 100 school-based literacy coaches to be placed in 100 schools that contain an eighth grade. Coaches will provide research-based teaching practices and job-embedded professional development to assist teachers in the development of specialized curricula.		
20 Salary Supplement Pilot for Math and Science Teachers	\$515,115	R
Provides funds for a salary supplement pilot to be developed by the State Board of Education. Three pilot LEAs will receive funds to provide a salary supplement of \$15,000 for up to 10 newly hired math and/or science teachers at the middle and/or high school level.		
21 NCWISE	\$1,900,000	NR
Provides funds to support new short-term contracts required to complete development of the statewide North Carolina Window of Information on Student Education (NCWISE) system.		

C. Expansion: Department of Public Instruction

22 Legacy System Migration and Upgrade		
Provides a reserve of funds to be used to bring DPI's information technology applications into compliance with statewide architecture requirements. DPI must obtain approval from the State Chief Information Officer prior to the expenditure of funds for this project. Funds may be carried forward into FY 2007-08. Any unused funds will revert to the General Fund on June 30, 2008.	\$2,000,000	NR
23 Network Tool Replacement		
Provides funds to support the cost of migrating DPI from a network tool not supported by ITS to a tool that is supported.	\$375,850	NR
24 Information Technology Security Analyst		
Provides funds to support a half-time IT security analyst position. The analyst will assist in the development of a security program and the execution of the DPI security charter to ensure compliance with federal regulations and state law.	\$40,000	R
	0.50	
25 Business Continuity Planning Analyst		
Provides funds to support a half-time business continuity planning analyst position. The analyst will develop and perform business continuity planning and management to ensure that DPI is in compliance with state law.	\$42,500	R
	0.50	
26 Business Technology Applications Analyst		
Provides \$72,647 from federal receipts to support a business technology applications analyst. The analyst will serve exclusively on the Exceptional Children's project team.		
27 Purchasing Agent		
Provides funds to support a Purchasing Agent III position. The agent will ensure accurate and efficient processing of all non-IT related service contracts requiring bids.	\$58,220	R
	1.00	
28 Director of High School Turnaround		
Provides funds to establish a permanent position to coordinate technical assistance to school districts with high schools identified as critically low performing (performance composite below 60%).	\$122,350	R
	1.00	
29 Office of Charter Schools		
Provides funds to support one fund-shifted administrative assistant, one new education planning and development consultant, and general operations of the Office of Charter Schools.	\$161,127	R
	2.00	
30 State Board of Education Operating Support		
Provides additional funds to support operations of the expanded State Board of Education.	\$50,000	NR
31 NC Wise Owl		
Provides funding to support increased cost of statewide subscriptions to online library resources that are made available to all teachers and students.	\$200,000	R

D. Expansion: Pass-Through Funds

32 Communities in Schools		
Provides additional funds to State-level non-profit program that supports local OS programs' efforts to connect at-risk students and their families with resources that will help the students succeed in school.	\$1,000,000	NR
33 NC Network		
Provides additional funds to non-profit program that provides training to school-based management teams.	\$50,000	NR
34 Teach for America		
Provides additional funds to non-profit program that recruits recent college graduates in non-education majors to teach in hard-to-staff schools.	\$200,000	NR
35 NC Humanities Council Teacher Institute Program		
Provides funds to non-profit program focused on promoting teaching and learning that develops teachers' capacity to understand, empathize with, and relate to various cultures.	\$100,000	NR
36 ExplorNet		
Provides additional funds to non-profit program that promotes effective use of information technology in the public schools.	\$100,000	NR
37 Futures for Kids		
Provides additional funds to non-profit program that enhances schools' capacities to provide students with opportunities for career exploration. Funds will be disbursed once the Futures for Kids program has consolidated operations with the career exploration services provided by the College Foundation of North Carolina. Futures for Kids and CFNC shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations on a consolidation plan prior to execution of that plan.	\$300,000	NR
38 Project Enlightenment		
Provides additional funds for Wake County to assist Project Enlightenment in continuing its model Demonstration Preschool program and consultation and education services to children, families, and other professionals.	\$50,000	NR
39 Kids Voting NC Funds		
Provides funding to Kids Voting of North Carolina, Inc., a non-profit corporation, to support Kids Voting Programs. Up to \$50,000 may be used to implement new Kids Voting programs across the State. The remainder shall be allocated on the basis of the North Carolina Department of Public Instruction's Average Daily Membership with a minimum of \$2,500 for the following counties: Buncombe, Cabarrus, Catawba, Clay, Cumberland, Davie, Durham, Greene, Guilford, Haywood, Henderson, Iredell, Jackson, Lee, Madison, Mecklenburg, New Hanover, Onslow, Randolph, and Wake to assist those counties with their Kids Voting programs (HB 1919 and SB 1369).	\$250,000	NR

Budget Changes	\$34,783,999	R
	\$105,160,022	NR
Total Position Changes	5.00	
Revised Total Budget	\$6,719,751,118	

	FY 06-07
Total Budget Approved 2005 Session	\$2,120,397,081

Budget Changes		
A. Base Budget Adjustments		
40 Building Reserves Adjustment		
Adjusts the building reserves for operating costs of new buildings due to a change in their completion dates. However, this change in reserves grants additional one-time funds to campuses for supplies, equipment, and moving costs for buildings that opened in FY 05-06, but were inadvertently cut in the 2005 Session.	(\$9,595,070) -91.80	NR
41 NC A&T Inflationary Increases	\$163,277	R
Restores inflationary increases for library book acquisition (\$145,491) and utilities (\$17,786) that were left out of the base budget submitted by the Governor in the 2005 Session.		
42 NC School of Science and Math Textbook Increase	\$52,250	R
Increases the budget for textbooks for the North Carolina School of Science and Math. The school failed to request an increase in the 2005 Session that was sufficient to fund the increase in textbook prices.		
B. Expansion		
43 Enrollment Growth for UNC Campuses	\$78,993,129	R
Funds enrollment growth for undergraduate and graduate students in regular term and distance education programs. Enrollment is anticipated to grow by 7,110 full time equivalent (FTE) students in FY 06-07.	575.00	
44 Enrollment Growth for NC School of Science and Math	\$240,000	R
Increases the enrollment at the North Carolina School of Science and Math by 12 students.	3.75	
45 Need-Based Financial Aid	\$21,587,990	R
Increases need-based financial aid for an increase of 1,730 eligible students entering UNC institutions in the Fall of 2006. The increase will also help the 34,930 students now receiving financial aid with price increases in tuition, fees, room board, books, and supplies.		
46 Judicial College	\$750,000	R
Increases the operating funds for judicial training at the School of Government at UNC-Chapel Hill. The Judicial College was approved in the 2005 Session with an initial appropriation of \$250,000.		
47 ECSU Pharmacy Space	\$43,000	NR
Pays the lease costs for six modular units that temporarily house the ECSU Pharmacy Program until a permanent facility is constructed.		

48 Graduate Nurse Scholarship Program for Faculty Production	\$1,200,000	R
Creates a graduate nurse scholarship loan program to provide \$15,000 per year for up to two years for master's candidates in nursing education and up to three years for doctoral candidates. Each recipient is required to teach in either a public or private nursing education program in North Carolina for each year they receive a scholarship loan or they must repay the loan.		
49 New Bachelor of Science in Nursing Programs	\$850,000	NR
Provides startup funds for new Bachelor of Science in Nursing programs at Fayetteville State University and UNC Pembroke and a new RN to BSN program at Appalachian State University. FSU and UNCP will each receive \$300,000 and ASU will receive \$250,000.		
50 Area Health Education Centers (AHEC) Expansion	\$1,300,000	NR
Funds North Carolina Area Health Education Centers (AHEC) initiative to address health workforce shortages in Allied Health, Dentistry, Nursing, and Pharmacy. In Allied Health, adds new clinical teaching sites throughout the state with an emphasis on physical therapy, speech language pathology, and occupational therapy. Provides clinical training for PharmD students at ECU. Supports rural training sites for dental students. Expands AHEC nursing grants program.		
51 AHEC Training of Psychiatrists and Other Mental Health Professionals	\$500,000	R
Funds the NC Area Health Education Centers (AHEC) program to develop innovative models for educating psychiatry residents/fellows and other mental health professionals in rural and underserved areas of the state in order to improve placement and retention of these professionals in rural communities, and to strengthen the provision of psychiatry services to these communities.		
52 Translational Medicine Program - UNC-CH School of Medicine	\$2,500,000	R
Expands the Translational Medicine Program at the UNC-Chapel Hill School of Medicine that was begun in FY 05-06 with \$1 million. The program is designed to identify and train junior faculty members in translational research to speed the development of new drugs, therapeutic strategies, devices and/or diagnostics, and to train physicians to collaborate with research faculty to apply medical discoveries to patient care and patient observations in research programs to improve health care.		
53 Perinatal Care Network	\$75,000	NR
Provides funds for the UNC Center for Maternal and Infant Health, to develop an ongoing statewide network of providers and professionals to focus on clinical and health systems in perinatal care, to create a database, and implement quality improvement initiatives with the goal of reducing infant mortality and morbidity.		
54 Kannapolis Research Campus	\$5,000,000	R
Funds the first year cost of the University of North Carolina's involvement in the North Carolina Research Campus, located at the site of the old Cannon Mills headquarters in Kannapolis. The campus will be the centerpiece of a public-private partnership between the state of North Carolina and Mr. David Murdock and his companies, Dole Foods and Castle & Cooke.		
	\$1,000,000	NR
	25.00	

55 NC A & T State University Matching Funds	\$614,847	R
Increases the campus match of federal funds from 90% to 100% for agricultural research and extension programs as mandated by the Agricultural Research, Extension, and Education Reform Act of 1998. The funds are appropriated to the School of Agriculture and Environmental Science.		
56 Biomanufacturing Research Institute and Technology Enterprise (BRITE)	\$2,500,000	R
Provides operating support, curriculum development, and equipment for the BRITE program that will begin in Fall 2006 at NC Central University. Students and faculty will share space in the Mary M. Townes Science Building until the BRITE facility is completed.		
57 Biomanufacturing Training and Education Center (BTEC)	\$2,000,000	R
Provides operating support, curriculum development, and equipment for the BTEC program at NC State University. BTEC academic courses will begin in the summer of 2006 even though the BTEC facility will not be completed until 2007.		
58 Statewide Program for Infection Control and Epidemiology (SPICE)	\$450,000	NR
Provides operating support to the Statewide Program for Infection Control and Epidemiology (SPICE) at the UNC-Chapel Hill School of Medicine.		
59 Institute of Medicine	\$375,000	NR
Increases the Institute of Medicine's capacity to provide relevant health data and policy recommendations to the General Assembly and other state policy makers. Funding will enable the Institute to undertake two additional studies per year and to provide a rapid response for data analysis for state decision makers.		
60 Family House at UNC Hospitals	\$1,000,000	NR
Assists the effort to construct the Family House at UNC Hospitals. This two-story, 40 bedroom facility on Old Mason Farm Road in Chapel Hill will provide affordable housing to critically ill patients, their family members and caregivers when visiting UNC Hospitals for evaluation or treatment. Family House has raised \$4.3 million of the \$6.3 million construction cost and hopes to open by mid 2007.		
61 TEACCH	\$348,349	R
Appropriates funds to the TEACCH Program in the Department of Psychiatry at UNC-CH as follows: (1) to increase the psychoeducational therapists' salaries and for additional fringe benefits; (2) for TEACCH clinic rents and operations; and (3) for the TEACCH DX and Medical Consultant Clinic.		
62 UNC-CH Cochlear Implant Program	\$350,000	NR
Appropriates funds to the UNC Board of Governors to fund CASTLE (Center for the Acquisition of Spoken Language Through Listening Enrichment) which is operated by the Carolina Children's Communicative Disorders Program of the UNC Health Care System. CASTLE shall use these funds to 1) train teachers and therapists across the state to work with deaf preschool-age children with cochlear implants and 2) provide oral preschool classes to these children.		

63 Focused Growth Campus Funds		
Provides additional funds to be evenly divided among the seven focused growth institutions (ECSU, FSU, NCA&T, NCU, UNC-P, VCU, and W&S).	\$1,000,000	NR
64 Special Needs Institutions		
Provides funds to UNC-Asheville (\$453,334), the NC School of the Arts (\$453,334), and the NC School of Science and Math (\$93,332).	\$1,000,000	NR
65 North Carolina Progress Board		
Provides funding for the increased research efforts of the Progress Board.	\$200,000	NR
66 NCSU Center for Universal Design		
Provides funding to this Center that designs products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.	\$300,000	NR
67 North Carolina Engineering Technology Center		
Helps establish the North Carolina Engineering Technology Center and supports the use of two adjoining buildings in Hickory for the development of engineering technology programs.	\$300,000	NR
68 Legislative Tuition Grant Increase	\$3,149,000	R
Increases the Legislative Tuition Grant from \$1,800 per student in private colleges to \$1,900.		
69 State Contractual Scholarship Fund Increase	\$3,116,125	R
Increases the State Contractual Scholarship Fund from \$1,150 per student in private colleges to \$1,250. These funds are used for financially needy students.		
70 LTG and SCSF Expansion	\$1,500,000	R
Expands the Legislative Tuition Grant and the State Contractual Scholarship Fund to part-time students that are lateral entry teachers or are nurses seeking additional certification.		
71 NC LIVE for Private Colleges	\$250,000	NR
Funds a portion of the costs charged to private colleges for their participation in NC LIVE (North Carolina Libraries for Virtual Education), the state's electronic library that provides access to magazine articles, national and local newspapers, business and professional journals, reference sources and research material.		
72 UNC-NCCCS 2+2 Joint E-Learning Initiative	\$1,000,000	NR
Provides funds to continue the UNC-NCCCS 2+2 E-Learning Initiative which began in 2005-06. This funding will be used to continue to build online capacity, teacher education courses, and accessibility for students in 2+2 teacher education programs.		
73 UNC-Chapel Hill DESTINY Traveling Science Lab	\$500,000	R
Provides funds for the DESTINY Traveling Science Lab program to support personnel and other costs associated with the program that will no longer be supported by grant funds.		

74 Principals' Executive Program Initiative	\$250,000	NR
Provides funds to the Principals' Executive Program (PEP) for an initiative focused on improving the management and leadership skills of principals in high need schools. PEP shall provide a customized professional development program and a coaching/mentor component that provides assistance at the school level.		
75 Expand Prospective Teacher Scholarship Loan Program	\$1,000,000	R
Provides funds for an additional 400 Prospective Teacher Scholarship Loans (PTSL). Priority for the additional awards shall be given to students seeking teacher licensure in middle and high school mathematics and science as well as students participating in a 2+2 teacher education program between the constituent institutions in the University of North Carolina and the NC Community College System.		
76 North Carolina in the World Project	\$200,000	NR
Provides funds to continue the NC in the World Project which began in FY 05-06. This project is an initiative of the NC Center for International Understanding and is focused on improving students knowledge and skills about the world.		
77 A+ Schools	\$100,000	NR
Provides funds to the A+ Schools program affiliated with the University of North Carolina at Greensboro to expand the number of public schools participating in the program. The program assists schools in implementing school reform by integrating arts into the curriculum.		
78 Math and Science Education Network Pre-College Program Expansion	\$670,000	NR
Provides additional funds for the NC Math and Science Education Network to expand the number of Pre-College Programs. These programs help prepare under-represented students to pursue college studies in math and science.		
79 Hunt Institute	\$500,000	NR
Provides additional operating support for the James B. Hunt, Jr. Institute for Educational Leadership and Policy in Chapel Hill. These funds will enable the Institute to sponsor a number of new initiatives focused on improving science and math instruction, encouraging extracurricular programs for students, and expanding the Institute's reach to vested interests in educational improvement such as mayors and chambers of commerce.		
80 NC Teacher Academy Training of Literacy Coaches	\$1,000,000	NR
Provides funds to the NC Teacher Academy to train literacy coaches who will each be assigned to schools with an eighth grade to provide professional development in literacy skills. Funds shall be used to design, develop, and implement both face-to-face and online training for these coaches.		
81 Expand Future Teachers of North Carolina Scholarship Loan Program	\$325,000	R
Provides funds for an additional 75 scholarship loans each year. This program awards scholarship loans to juniors and seniors in North Carolina public and private colleges that agree to become certified to teach math, science, special education, or English as a Second Language in NC public schools. The scholarship loan award is \$6,500 per year.		

Budget Changes	\$126,039,967	R
	\$2,617,930	NR
Total Position Changes	511.95	
Revised Total Budget	\$2,249,054,978	

Community Colleges

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$767,295,886

Budget Changes

A. Access

82 Enrollment Growth	\$7,125,475	R
Fully funds the community college enrollment request. Enrollment increased by 2,277 FTE, from 190,750 to 193,027, an increase of 1.19%.		
83 Multi-Campus College Enrollment Growth	\$601,171	R
Provides funds to accommodate enrollment growth at 12 multi-campus locations. Total supplemental funding for multi-campus colleges will be \$10,916,638, distributed on a formula basis to 16 colleges for 23 sites.		
84 Enrollment Growth Reserve	\$1,900,000	NR
Provides funds for an Enrollment Growth Reserve to assist colleges that experience high growth in the Fall semester. Funds shall be distributed to colleges that realize an increase greater than 5% over the previous Fall semester.		
85 Need Based Financial Aid for Teaching and Nursing	\$500,000	NR
Provides funds for financially needy students enrolling in teacher prep or nursing programs. This program will be funded through the Lottery Scholarship program beginning in FY 07-08.		
86 Associate Director of Financial Aid	\$73,466	R
Provides funding in the System Office budget for an Associate Director of Financial Aid to provide guidance, leadership, and training to assist college financial aid offices. The General Assembly encourages the State Board of Community Colleges to develop and implement a comprehensive financial aid professional development program for college financial aid staff.	\$4,150	NR
	1.00	
87 Community College Financial Aid Staff	\$3,557,430	R
Provides one position in the base allotment for administration for additional financial aid staff at each college. These funds are restricted to use for student services positions and may not be transferred or used for any other purpose.		

B. Improving Instruction

88 Equipment	\$10,000,000	NR
Provides additional funds for the purchase of instructional equipment at all 58 community colleges. The State Board of Community Colleges may use up to \$94,973 of these funds in FY 06-07 for furniture and equipment at the System Office. The remainder of the funds shall be distributed to the colleges in accordance with the existing equipment formula.		

89 Director of Joint High School - Community College Programs	\$83,950	R
Provides funds in the System Office budget for the creation of a Statewide director of joint high school - community college programs, including Learn and Earn, Middle College, Huskins, and dual enrollment.	\$4,150 1.00	NR
90 State Board Reserve Funds		
Provides additional funding to the State Board Reserve to provide one-time grants to colleges starting new programs.	\$500,000	NR
91 Faculty & Professional Staff Salaries		
Funds are included in the Salary Reserve Section of this budget to provide a 6% permanent annual salary increase and a 2% one-time bonus to community college faculty and professional staff.		
92 Additional Funding for Nursing Programs	\$1,000,000	R
Allows the State Board of Community Colleges to fund nursing programs at the colleges on a weighted FTE basis. Colleges may use these funds for nursing equipment and supplies, or to supplement the salaries of nursing faculty.		
93 Community College Facilities, Equipment, and Allied Health		
Provides \$15,000,000 for grants for community college facilities and equipment needs, and \$5,000,000 for community college allied health projects.	\$20,000,000	NR
C. Workforce Development		
94 BioNetwork Capstone Center		
Provides additional funds for specialized supplies needed at the BioNetwork Capstone Center.	\$310,000	NR
95 Kannapolis Research Campus	\$2,203,564	R
Funds the Rowan-Cabarrus Community College Biotechnology Training Center and Greenhouse at the North Carolina Research Campus in Kannapolis. Funds will be used for equipment, faculty and staff, building operations, and lease expense.		
96 BioNetwork Industry Liaison	\$125,000	R
Provides funds for the creation of a new position in the System Office to assist in the development of NBT, FIT, and QT services to meet the needs of the biotechnology industry.	\$4,150 1.00	NR
97 Regional Customized Training Directors	\$148,470	R
Provides funds for 2 additional Regional Customized Training Directors, for a total of 7 - one for each economic development region in the State.	\$5,000 2.00	NR
98 NC REAL Enterprises		
Provides funding for NC REAL. This program was formerly supported by the Worker Training Trust Fund.	\$250,000	NR

99 NC Military Business Center		
Provides funds for the continued operation of the NC Military Business Center (NCMBC), a program run by Fayetteville Tech in conjunction with Craven CC, Coastal Carolina CC and Wayne CC, to foster statewide business development originating from the five military bases in the State and to sustain MatchForce.org, the State's website for matching NC businesses with federal contract opportunities.	\$1,000,000	NR
D. Technology		
100 Course Management System & Learning Objects Repository	\$1,370,850	R
Provides funds for an online teaching and learning platform for distance education.		
101 Online Help Desk	\$605,000	R
Provides funds to establish an online help desk for students enrolled in distance education courses.	\$20,000	NR
102 NC Information Highway Expansion		
Provides \$15,000 each to 8 colleges for the purchase of mobile ("roll about") videoconferencing equipment.	\$120,000	NR
103 Virtual Learning Community Development Centers	\$300,000	R
Provides funding for 2 centers for the development of distance education courses.	\$200,000	NR
E. Technical Adjustments		
104 Hospitalization Insurance	\$1,398,201	R
Appropriates hospitalization insurance at the FY 06-07 rate.		
105 Tuition Receipts Adjustment	\$10,750,000	R
Provides funds to replace under-realized tuition receipts.		
F. Receipt Supported Positions		
106 Business & Technology Applications Analyst		
Allows for the creation of a Business & Technology Applications Analyst position in the System Office, Administration Division to assist with Basic Skills needs, including federal literacy reporting requirements. The total requirement for this position is \$85,713, to be funded entirely from Federal Adult Education Funds.		
Budget Changes	\$29,342,577	R
	\$34,817,450	NR
Total Position Changes	5.00	
Revised Total Budget	\$831,455,913	

**HEALTH
&
HUMAN SERVICES
Section G**

Health and Human Services

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$4,264,940,128

Budget Changes

(1.0) Division of Medical Assistance

1 Revised Medicaid Forecast	(\$150,000,000)	R
Reduces state appropriations for the Medicaid program based upon a revised forecast.		
2 Ticket-To-Work Date Change	(\$150,000)	R
Reduces funding for the Ticket-To-Work Program for FY 2006-07 because the implementation date has been changed to July 1, 2007.		
3 Medicaid Reserve Fund	(\$3,000,000)	NR
Transfers funding from the GS 143-23.2 reserve to support current services and reduce State appropriations.		
4 Inflationary Increases	\$12,000,000	R
Provides funding for inflationary increases for Medicaid providers. Effective January 1, 2007.		
5 CAP-MR/DD Slots	\$3,000,000	R
Provides full funding for additional slots for the Community Alternatives Program for the Mentally Retarded/Developmentally Disabled.		
6 Reimbursement Rates for Skilled Nursing Facilities	\$1,500,000	R
Provides funding to make adjustments to case-mix reimbursement rates for skilled nursing facilities. Effective January 1, 2007.		
7 In-Home Services Rate Adjustment	\$1,500,000	R
Provides funding for rate increases for home health and personal care services providers. Effective January 1, 2007.		
8 Health Care Access Study	\$100,000	NR
Provides funding to support the development of a plan to expand health care access for uninsured North Carolinians through the use of public/private partnerships, federal flexibility and resources, and promotion of charity care by health care providers.		
9 Provider Rate Study	\$100,000	NR
Provides funding to contract with independent consultants and financial experts to assist the Division in developing a proposal for an equitable standard to provide inflationary increases and other cost related increases to service providers in the Medicaid program.		
10 One-Time Cap On County Medicaid Share	\$27,400,000	NR
Provides nonrecurring funding for one-time assistance so that all 100 counties' portion of Medicaid service costs for FY 2006-07 does not exceed the amount paid in FY 2005-06.		

(3.0) Division of Public Health

11 Eye Exams Reduces funding for the Governor's Vision Care Program	(\$1,500,000)	R
12 Early Intervention Provides funding to expand the capacity of the Early Intervention program for children ages birth to three in response to the increase in the number of children referred for services. Also authorizes the use of receipts to support 56 full-time equivalent positions.	\$7,103,147 141.00	R
13 Universal Vaccine Program Provides funding to expand coverage of the influenza and pertussis vaccines.	\$5,526,095	R
14 Dental Preventive Services Provides funding for dental preventive services to children at high risk for tooth decay. Funds support the fluoride mouth rinse program in public schools, community water fluoridation and laboratory testing, the provision of dental sealants, and other needed dental care. Funding is also provided for a Public Health Program Manager I position.	\$390,000 1.00	R
15 School Nurse Funding Provides recurring funding to support 65 school nurse positions previously supported on a time-limited basis by federal block grants.	\$3,250,000	R
16 Women's Health Services Provides funding for family planning services to uninsured women who are not eligible for Medicaid.	\$200,000	NR
17 Health Disparities Initiative Provides funding for grants-in-aid awarded through the Community-Focused Eliminating Health Disparities Initiative (CFE-DI). Also, provides funds to support one position to manage the program.	\$2,000,000 1.00	R
18 Healthy Start Foundation Provides a grant-in-aid to the Healthy Start Foundation.	\$300,000	NR
19 Prevention of Pre-term Births Provides funding to provide education to women on the benefits of progesterone for those who have had preterm births and to purchase medication for eligible minority and low-income women.	\$150,000	NR
20 Child Maltreatment Provides funding for one position and support costs to coordinate the implementation of NC Institute of Medicine recommendations for initiatives to prevent the occurrence of child maltreatment.	\$90,000 1.00	R
21 Antiviral Purchase for Pandemic Flu Provides funding for the state match for federal funds to purchase and store 27,300 courses of influenza antiviral medication. 10,000 courses will be for the state's first responders and the remaining 17,300 courses will be for front-line healthcare workers.	\$400,000	NR

22 Private Well Water Safety Program		
Provides funding for equipment and supplies to test the anticipated additional private well water samples due to increased standards for newly constructed wells. Authorizes three positions to be supported through fee receipts, estimated at \$915,530. Authority for the fees is included in Section 10.20 of this bill.	\$226,000	NR
(4.0) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
23 ADATC	\$3,969,719	R
Provides funding for personnel and operating support associated with the expansion of the acute units at the Walter B. Jones and R.J. Blackley Alcohol and Drug Abuse Treatment Centers.	93.00	
24 Developmental Therapies for DD	\$26,000,000	R
Provides funding for a state-funded service to replace services lost due to changes in federal policy and cuts in federal support.		
25 Mental Health Services	\$7,200,000	R
Provides funding for mental health services to be distributed to the Local Management Entities (LMEs) such that each LME receives a percentage of the total allocation that is equal to that LME's percentage of the State's total population below the poverty level.		
26 Substance Abuse Services	\$7,200,000	R
Provides funding for substance abuse services to be distributed to the LMEs such that each LME receives a percentage of the total allocation that is equal to that LME's percentage of the State's total population below the poverty level.		
27 Housing Trust Fund - 400 Apartment Initiative		
Provides \$10,937,500 in non-recurring funding to the North Carolina Housing Trust Fund for a 400 independent- and supportive-living apartment initiative recommended by the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. These funds are for the financing of the portion of the 400 apartments not able to be financed within the existing means of the North Carolina Housing Finance Agency. Operating assistance for the 400 apartments will be provided from the funds in the next item. The apartments shall be for individuals with disabilities and shall be affordable to those with incomes at the Supplemental Security Income (SSI) level.		
The funds for this item are located in the Housing Finance Agency section of this report.		
28 Operating Cost Subsidy - 400 Apartment Initiative	\$1,205,000	R
Provides recurring operating cost subsidy for 400 independent- and supportive-living apartments for individuals with disabilities financed by the North Carolina Housing Finance Agency as described in the previous item. The apartments shall be affordable to those with incomes at the Supplemental Security Income (SSI) level.		

29 Supportive Services for HUD 811 Projects	\$635,000	R
Provides funding for on-going operations and start-up expenses to support 12 group home beds and 80 apartments financed through the United States Department of Housing and Urban Development.	\$330,000	NR
30 Mental Health Trust Fund		
Provides \$14,390,000 in funding for the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to be used in accordance with G.S. 143-15.3D		
The funds for this item are located in the Statewide Reserves section of this report.		
31 Start-Up Funding for Crisis Services		
Provides funding for start-up costs for crisis services to be used by LMEs to establish a continuum of regional crisis facilities and local crisis services for persons with mental illness, developmental disabilities, and substance abuse addictions.	\$5,250,000	NR
32 State Service Dollars for Crisis Services	\$7,000,000	R
Provides funding for crisis services to be distributed to LMEs such that each LME receives a percentage of the total allocation that is equal to that LME's percentage of the State's total population below the poverty level. LMEs may use these funds to pay for mental health, developmental disabilities, or substance abuse crisis services provided to non-Medicaid eligible adults and children who are indigent and have no other third-party payment source.		
33 Consultants to Aid the Division and LMEs		
Provides funding for consultants to aid the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and the LMEs with planning for crisis services, strategic planning, developing performance indicators, standardization, and capacity-building.	\$925,000	NR
34 Child and Family Teams	\$523,638	R
Provides funding for LMEs to hire 18 Care Coordinators to work with Child and Family Teams.		
(5.0) Division of Facility Services		
35 State Regional Advisory Committees		
Provides funding for the State's eight Regional Advisory Committees.	\$200,000	NR
(7.0) Divisions of Services for the Blind and Services for the Deaf and Hard of Hearing		
36 Accessible Electronic Information for Blind and Disabled Persons		
Provides funding to continue accessible electronic information services for blind and disabled persons.	\$75,000	NR

(8.0) Division of Child Development

37 Child Care Subsidy	\$14,096,395	R
Provides funding to maintain existing caseload and implement rate adjustments, by region, as defined in the 2005 Child Care Market Rate Study. (SB 1741, Section 10.34) Additional funding in the Temporary Assistance for Needy Families (TANF) Block Grant for child care subsidy will remove 3,096 children from the waiting list.		
38 Smart Start	\$13,500,000	R
Provides funding for local Smart Start initiatives, including subsidized child care. \$400,000 shall be allocated to the North Carolina Partnership for Children, Inc., for operating support.		
39 Improve Regulatory Oversight	\$453,222	R
Provides funding to create 10 positions in the Division of Child Development's Licensing Unit. Additional staff will reduce caseloads and allow for more frequent monitoring visits.		
	\$12,291	NR
	10.00	
40 T.E.A.C.H. Program	\$1,000,000	NR
Provides funding to the North Carolina T.E.A.C.H. Early Childhood® Project.		

(9.0) Division of Education Services

41 Early Intervention Teachers for the Deaf and Hard of Hearing	\$293,493	R
Provides funding to create eight additional teaching positions in the Early Intervention Program for Children who are Deaf or Hard of Hearing Program		
	8.00	
42 Early Intervention Teachers for the Blind and Visually Impaired	\$233,533	R
Provides funding for five additional teaching positions and one Orientation and Mobility Specialist at the Governor Morehead School for the Blind's Preschool.		
	6.00	
43 Language Interpreters	\$121,771	R
Provides funding to create one language interpreter position at the North Carolina School for the Deaf in Morganton, one language interpreter position at the Governor Morehead School in Raleigh, and two language interpreter positions in the Early Intervention Program for Deaf and Hard of Hearing.		
	4.00	
44 Dormitory Supervisors at North Carolina School for the Deaf in Morganton	\$39,730	R
Provides funding to create two additional Residential Life Attendants for the North Carolina School for the Deaf in Morganton.		
	2.00	
45 Housekeeper at North Carolina School for the Deaf in Morganton	\$20,358	R
Provides funding to create one additional housekeeping staff at the North Carolina School for the Deaf in Morganton.		
	1.00	
46 Behavior Specialists for Eastern North Carolina School for the Deaf	\$45,663	R
Provides funding for two additional Behavior Programming Technicians at the Eastern North Carolina School for the Deaf for the Positive Behavior Support Program		
	2.00	

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FY 06-07

47 Telemedicine for Children in Residential Schools	\$24,000	R
Provides funding to implement telemedicine programs at the Western North Carolina School for the Deaf in Morganton and the Governor Morehead School for the Blind in Raleigh.	\$50,000	NR
48 Beginnings for Parents of Children Who Are Deaf or Hard of Hearing, Inc.		
Provides funding for family support services.	\$168,235	NR
(10.0) Division of Social Services		
49 Work First Cash Assistance		
Reduces funding for Work First Cash Assistance payments for Fiscal Year 2006-07.	(\$2,287,393)	NR
50 Foster Care and Adoption Assistance Payments	\$10,206,898	R
Provides funding to support the increased cost of the Foster Care and Adoption Assistance Programs.		
51 Federal Budget Impact on Foster Care Services	\$2,040,755	R
Provides funding to support the projected cost of additional foster care maintenance payments to be made to people caring for their relatives' children who choose to become licensed.		
52 Paternity Testing for Child Support Enforcement	\$151,500	R
Provides funding to support the loss of federal funds for paternity testing expenses.		
53 Child and Family Teams	\$420,804	R
Provides funding for positions to facilitate Child and Family Team meetings in county DSSs that will support the statewide implementation of the Multiple Response System.		
54 Food Banks		
Provides funding to be equally distributed to the regional network of food banks in North Carolina.	\$750,000	NR
55 State/County Special Assistance Rate Adjustment	\$2,400,000	R
Provides funding for an increase in the State/County Special Assistance monthly rate from \$1,118 per month to \$1,148 per month effective January 1, 2007.		
56 Child Support Enforcement Call Center		
Provides funding to replace the Voice Response Unit and upgrade the telephone system for the Child Support Enforcement Call Center in Martin County.	\$2,000,000	NR
(11.0) Division of Aging and Adult Services		
57 Home and Community Care Block Grant	\$4,000,000	R
Provides funding for the Home and Community Care Block Grant Program.		

58 LTC Quality Improvement	\$492,136	R
Provides funding for eight long-term care ombudsman positions including benefits and travel and \$100,000 for a contract for the Quality Improvement Program authorized in Section 10.40A(p) of S.L. 2005-276.	8.00	
59 Adult Day Care Rates	\$1,043,750	R
Provides funding to increase the daily rates for adult day care and adult day health care programs by \$5.00. \$556,556 will be allocated to the State Adult Day Care Fund and \$487,194 shall be allocated to the Home and Community Care Block Grant Program.		
(12.0) Office of the Secretary		
60 Transfer More At Four Program to DPI	(\$66,646,653)	R
Transfers funding for the More At Four program to the Department of Public Instruction.		
61 Utility and Fuel Cost Reserve	\$585,417	NR
Provides funding to support the increased cost of utility services and fuel for state institutions operated by the Department of Health and Human Services.		
62 MMIS Implementation		
Transfers funding from the GS 143-23.2 reserve to continue to fund the state share of implementing the new Medicaid Management System (MMS).		
Total Requirements	\$5,004,504	
Transfer From Medicaid Reserve Fund	(\$5,004,504)	
State Appropriation	0	
63 Public Awareness of Safe Surrender of Infants Campaign	\$98,000	NR
Provides funding to inform the public of the Safe Surrender Act (S.L. 2001-291).		
64 Psychiatrist Access	\$3,000,000	R
Provides funding to improve psychiatrist access for public consumers.	\$1,500,000	NR
65 Strategic LME Team	\$300,000	R
Provides funding to be used for three positions to create a Local Management Entity (LME) Strategic Assistance Team. The Team shall assist LMEs develop, implement, and maintain their statutory responsibilities.	3.00	
66 Community Health Center Grants	\$3,000,000	NR
Provides additional funding for grants-in-aid awarded through the Community Health Center Grant Program.		
67 Rural Hospital Operations and Maintenance	\$3,000,000	NR
Provides funding for small rural hospitals in need of assistance with operations and infrastructure maintenance.		

Budget Changes	(\$75,320,046)	R
	\$42,532,550	NR
Total Position Changes	281.00	
Revised Total Budget	\$4,232,152,632	

**NATURAL
&
ECONOMIC
RESOURCES
Section H**

Agriculture and Consumer Services

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$51,032,884

Budget Changes		
Administration		
1 Human Resources	\$97,382	R
Provide funding for one (1.0) Personnel Technician position in Human Resources.	1.00	
Salary and Benefits	\$40,590	
Other Expenses	\$56,792	
2 Public Affairs - Agricultural Review		
Provide increased funding for the Agricultural Review to address rising operational costs.	\$40,000	NR
Emergency Programs		
3 Emergency Preparedness - Staffing Support	\$337,000	R
Provide General Fund appropriation to establish two (2.0) new positions and to fund shift two (2.0) existing positions from receipt-support:	4.00	
Veterinarian	1.0	
Animal Health Technician II	1.0	
Application Analyst II	2.0	
Salaries and Benefits	\$283,252	
Equipment and Supplies	\$ 15,248	
Other Expenses	\$ 38,500	
4 Emergency Preparedness - Operating Expenses	\$300,000	R
Provide additional funding for operating expenses associated with the Multi-Hazard Threat Database.		
Food and Drug		
5 Emergency Preparedness - Food Safety	\$538,257	R
Provide funding for eleven (11.0) positions to address staffing shortages in food protection, compliance and regulations:	11.00	
Chemist II	2.0	
Ag Microbiologist II	2.0	
Food Compliance Officer I	1.0	
Food Regulatory Specialist I	6.0	
Salaries and Benefits	\$442,890	
Purchased Services	\$ 60,742	
Other Expenses	\$ 34,625	
6 Emergency Preparedness - Replace Distillation System		
Provide funding for the replacement of the water distillation system at Constable Laboratory.	\$100,000	NR

7 Emergency Preparedness - Purchase/Replace Lab Equipment			
Provide funding for the purchase and replacement of lab equipment.		\$500,000	NR
8 Pesticide Staffing Support		\$194,429	R
Provide three (3.0) additional positions to the Pesticide Section:		\$6,149	NR
		3.00	
Environmental Toxicologist	1.0		
Bilingual Pesticide Specialist	1.0		
Pesticide Environmental Investigative Specialist	1.0		
Salaries and Benefits	\$147,713		
Purchased Services	\$ 29,996		
Supplies	\$ 16,140		
Other Expenses	\$ 6,729		
9 Restore Funding for the Pesticide Disposal Program		\$222,407	R
Restore General Fund reduction to the Pesticide Disposal Program made in FY 05/06.			
Markets			
10 Domestic Marketing		\$40,000	R
Provide additional funding for the "Got to be NC" agriculture marketing initiative. Also provides one (1.0) Agricultural Marketing Specialist position.		\$240,300	NR
		1.00	
Meat and Poultry			
11 Emergency Preparedness - Food Safety and Security Mandates		\$163,000	R
Provide funding for 50 percent of six (6.0) meat inspector positions to match US Department of Agriculture funding.		6.00	
Salaries and Benefits	\$134,400		
Other Expenditures	\$ 28,600		
Plant Industry			
12 Export Certification Program		\$145,310	R
Provide funding to establish two (2.0) Export Certification positions required to respond to the increased demand for issuance of phytosanitary certificates in North Carolina.		2.00	
Export Certification Specialist	2.0		
13 Reduce Unrealized Fertilizer Receipts		\$100,000	NR
Replace a portion of unrealized fertilizer receipts.			
Research Stations			
14 Replace Unrealized Research Station Receipts		\$350,000	NR
Replace unrealized Research Stations receipts with a General Fund appropriation.			

Standards

15 Standards Inspectors	\$39,156	R
Provide funding for two (2.0) additional Standards Inspectors to be assigned to inspect retail motor fuel dispensers and retail weights and measures devices.	\$23,000	NR
	2.00	
Salaries and Benefits	\$32,946	
Equipment and Supplies	\$25,240	
Other Expenses	\$ 3,970	

Veterinary Services

16 Emergency Preparedness - Director of Laboratory Operations position	\$147,172	R
Establish one (1.0) Director of Laboratory Operations position.		
	1.00	
Salary and Benefits	\$128,376	
Purchased Services	\$ 11,900	
Equipment and Supplies	\$ 5,696	
Other Expenses	\$ 1,200	

Budget Changes	\$2,224,113	R
	\$1,359,449	NR
Total Position Changes	31.00	
Revised Total Budget	\$54,616,446	

Labor

GENERAL FUND

		FY 06-07	
Total Budget Approved 2005 Session		\$14,434,925	
Budget Changes			
Administration			
17 Fund Travel and Office Space		\$213,894	R
Provide funds for field staff to travel and for existing field office space.			
Elevator and Amusement Device Bureau			
18 Establish Receipt-Supported Positions			
Establish two (2.0) receipt-supported positions to inspect elevator and amusement devices.			
Elevator Inspectors	2.0	\$111,696	
Salaries and Benefits		\$98,166	
Travel and Phone		\$12,748	
Other		\$ 782	
Labor Standards and Inspections			
19 Replace Appropriations for Mine and Quarry Program		\$200,000	R
Provide funds to offset unrealized safety training fee receipts. Fund shift 3.5 positions from receipt supported.			
		3.50	
Mine Safety & Health Representative 3.5			
Salaries and Benefits		\$199,669	
Travel		\$ 331	
Occupational Safety and Health			
20 Fund Operating			
Fund various operating line items in Occupational Safety and Health.			
		\$200,000	NR
Budget Changes		\$413,894	R
		\$200,000	NR
Total Position Changes		3.50	
Revised Total Budget		\$15,048,819	

Environment & Natural Resources

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$168,451,089

Budget Changes

(2.0) CGIA

21 Fund NC OneMap	\$70,000	R
Provide funds to enhance NC OneMap system to provide 24-7 access and to provide technical assistance to local governments who connect to NC OneMap. Provide funds for one (1.0) new position.	\$80,000	NR
	1.00	
Business & Technology Applications Specialist 1.0		
Salary and Benefits	\$70,000	
Computer and Software	\$80,000	

(2.0) Coastal Management

22 Create New Coastal Habitat Protection Compliance Positions	\$249,757	R
Provide funds to establish four (4.0) Compliance Coordinator positions, one in each Division of Coastal Management district to provide compliance and enforcement services.	\$27,770	NR
	4.00	
Environmental Specialist III 4.0		
Salaries and Benefits	\$204,338	
Rent	\$ 6,668	
Travel	\$ 22,600	
Supplies	\$ 16,151	
Furniture & Computers	\$ 27,770	

(2.0) Environmental Health

23 Fund Private Well Water Safety Program	\$271,079	R
Provide funds for technical support and enforcement assistance to counties as they enforce statewide private water supply well construction standards. Provide funds for five (5.0) new positions.	\$827,550	NR
	5.00	
Environmental Health Regional Specialist 4.0		
Administrative Assistant I 1.0		
Salaries and Benefits	\$234,454	
Travel and Rent	\$ 30,625	
Supplies	\$ 6,000	
Furniture and Computers	\$ 27,550	

24 Protection of Drinking Water Supplies

Increase the existing community water system operating permit fees, charge a new operating permit fee on non-community non-transient water systems, and charge new plan review fees. New fee revenue will fund nineteen (19.0) additional positions for field response, inspections, technical assistance, compliance oversight, laboratory support and review and approval of plans to protect public drinking water supplies. Positions will be funded as fee revenue is generated with seven (7.0) positions funded in FY06-07 and the remaining positions funded in FY07-08.

Environmental Engineer II 4.0
Environmental Engineer I 14.0
Environmental Technician V 1.0

25 Emergency Drinking Water Funds

Provide funds to pay for notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit and the senior official in charge of any business at which drinking water is supplied from a private drinking water well that is located within 1,500 feet of known groundwater contamination. Provide funds to cover the costs of testing private drinking water wells for contamination and for the provision of alternative drinking water supplies to persons whose drinking water well is contaminated.

\$300,000 NR

26 Fund Shellfish Sanitation Positions

Provide funds to monitor and classify North Carolina's shellfish growing waters and to conduct the shoreline survey. Funds three (3.0) positions, one GS staff person and two shoreline surveyors.

\$167,980 R

\$11,020 NR
3.00

Environmental Health Specialist 1.0
Environmental Health Regional Specialist 1.0
Computing Consultant 1.0

Salaries and Benefits \$133,686
Travel \$ 19,000
Rent \$ 3,000
Supplies \$ 12,294
Furniture and Computers \$ 11,020

27 Fund Wastewater Treatment Consultants

Provide funds for two (2.0) positions to provide technical on-site assistance to customers requesting waste water permits for septic tanks.

\$140,079 R

2.00

Soil Scientist II 1.0
Environmental Engineer II 1.0

(2.0) Land Resources

28 Restore Contractual Services

Restore funding for contractual services for a county boundary program eliminated in FY 05/06.

\$50,000 NR

(2.0) Water Quality

29 Fund Water Quality Monitoring on Ferry Vessels		
Provide funds for the Ferrymon Program which evaluates water quality in the Pamlico Sound and its tributary rivers using equipment attached to three ferry vessels.	\$300,000	NR

(3.0) Aquariums

30 Fund Operating		
Provide funds for the operations of the aquariums.	\$2,500,000	NR

(3.0) Marine Fisheries

31 Coastal Recreational Fishing License Implementation		
Provide funds to establish two (2.0) positions and operating support for the development and operations of the licensing system associated with the Coastal Recreational Fishing License (CRFL). These positions will be funded with receipts generated from the sale of CRFL effective FY 07/08. Positions include:	\$375,000	NR
	2.00	
Process Analyst IV	1.0	
Bus Tech Applications Analyst	1.0	
Salaries and Benefits	\$128,351	
Purchased Services	\$191,629	
Supplies	\$ 6,120	
Equipment	\$ 48,900	
32 Shellfish Mapping and Submerged Aquatic Vegetation Mapping Programs	\$331,651	R
Provide five (5.0) additional positions and operating expenses to enable the Marine Fisheries Division to map shellfish resources and habitat as recommended by the Coastal Habitat Protection Plan:	\$87,048	NR
	5.00	
Computing Consultant I	1.0	
Marine Fisheries Technician II	4.0	

(3.0) Soil and Water Conservation

33 NC Agricultural Cost Share Technical Assistance	\$333,778	R
Provide additional support for cost-shared funds to soil and water conservation districts and counties for technical assistance needed to install quality Best Management Practices through the Agriculture Cost Share Program		
34 NC Agriculture Cost Share Financial Assistance	\$200,000	R
Provide additional funding to the Agriculture Cost Share Program to assist 100 additional producers per year to install Best Management Practices to improve water quality.	\$200,000	NR
35 Extend Conservation Resource Enhancement Program (CREP)	\$575,000	R
Provide additional funding to the CREP program to expand into additional watersheds in need of riparian buffers and restored wetlands.	\$425,000	NR
	3.00	
Salaries and Benefits	\$139,895	
Contracts and Easements	\$850,000	
Other Operating Expenses	\$ 10,105	

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36 Soil and Water Conservation District Supervisor Travel	\$25,000	R
Provide funding for travel reimbursement for Soil and Water Conservation District Supervisors.		
37 Poultry Waste Management Best Practices	\$200,000	NR
Provide funds for new poultry waste management techniques.		
(4.0) Reserves and Transfers		
38 Resource Conservation and Development Councils	\$200,000	NR
Provide each of the State's ten Resource Conservation and Development Councils with a grant of \$20,000.		
39 Clean Water SRF Match Funds	\$3,160,852	NR
Provide funds to meet the 20% state match requirement for drawing down the maximum available federal funds for the Clean Water State Revolving Fund.		
40 Drinking Water SRF Match Funds	\$2,909,820	NR
Provide funds to meet the 20% state match requirement for drawing down the maximum available federal funds for the Drinking Water State Revolving Fund.		
41 Forest Development Program (FDP)	\$600,000	NR
Provide additional funding to reduce the current waiting list of landowner applicants for cost share assistance to reforest land.		
42 Increase Grassroots Science Program Funding	\$133,578	NR
Increase funding for the Grassroots Science Program		
43 Monitoring and Emergency Cleanup of the Texfi Site Contamination	\$100,000	NR
Provide funding for additional monitoring and cleanup of contamination at the Texfi Site.		
Budget Changes	\$2,364,324	R
	\$12,487,638	NR
Total Position Changes	25.00	
Revised Total Budget	\$183,303,051	

Commerce

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$36,728,265

Budget Changes

Administrative Services

44 Establish Position to Monitor Non-Profits	\$63,000	R
Establish one (1.0) Auditor II position and provide operating funds to monitor all non-state entities receiving funds through the Department of Commerce.	\$87,000	NR
	1.00	
Salary and Benefits	\$63,000	
Operating Expenses	\$87,000	

Board of Science and Technology

45 One North Carolina Small Business Fund		
Provide funds for the Federal Small Business Innovation Research/ Small Business Technology Transfer Research matching program. The program provides incentive funds to small businesses to apply for federal innovation grants.	\$5,000,000	NR

Finance Center

46 One North Carolina Fund		
Provide funds for the One North Carolina Fund for FY 06/07.	\$15,000,000	NR

Industrial Commission

47 Replace Electronic Document System		
Provide funds to replace electronic document system. State funds will be used in addition to existing fee receipts (\$2,100,000) to fund the new system.	\$1,500,000	NR
Total Requirements:	\$3,600,000	
Less Anticipated Receipts: (\$2,100,000)		
State Funds Required:	\$1,500,000	

Information Services

48 Web Applications Development and Maintenance	\$70,819	R
Establish one (1.0) Application Analyst position to develop and maintain a web site for the department.	\$5,000	NR
	1.00	
Salary and Benefits	\$70,819	
Equipment	\$5,000	

Local Planning and Management

49 Expand Small Towns Main Street Program	\$71,965	R
Establish one (1.0) Community Development Planner position to serve the western part of the state. Program activities in the eastern region are funded by a Z. Smith Reynolds grant.	1.00	
Salary and Benefits	\$48,663	
Transportation/Meals/Lodging	\$21,202	
Supplies and Equipment	\$ 2,100	
50 Expand 21st Century Communities Program	\$244,699	R
Establish three (3.0) Community Development Planner positions and provide operating funds to expand the program to 5 new communities annually.	3.00	
Salaries and Benefits	\$198,459	
Rent	\$ 6,400	
Supplies and Office Equipment	\$ 17,190	
Printing and Postage	\$ 1,650	
Other Expenses	\$ 21,000	

Marketing

51 Promote N.C. as a Business Destination	\$500,000	R
Provide funds for advertising in business publications, public relations outreach, marketing materials, national and international industry trade shows, and conference participation.	\$500,000	NR
52 Furniture Market Advertising	\$875,000	R
Provide funds to the High Point International Home Furnishings Market Authority Corporation to promote the International Home Furnishings Market.	\$875,000	NR

Policy and Research

53 Provide Additional Staff	\$225,000	R
Provide funds for two (2.0) positions for the Division to expand research and planning for economic development.	3.00	
Economist III	1.0	
Policy Development Analyst II	1.0	
Business and Technical Application Tech.	1.0	
Salaries and Benefits	\$187,367	
Operating Expenses	\$ 37,633	

Reserves and Transfers

54 Economic Development Reserve Fund		
Provide funds for economic development projects.	\$10,000,000	NR

Tourism, Film and Sports Promotion

55 Promote Film Industry		
Provide funds to expand and promote the film industry in North Carolina.	\$250,000	NR

Commerce

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56 Marketing Reserve	\$500,000	R
Provide funds for a statewide marketing reserve.	\$500,000	NR
57 Promote Motor Sports		
Provide funds to promote motor sports.	\$100,000	NR
Budget Changes	\$2,550,483	R
	\$33,817,000	NR
Total Position Changes	9.00	
Revised Total Budget	\$73,095,748	

Commerce - State Aid

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$11,722,085

Budget Changes

58 Advanced Vehicle Research Center		
Provide funds to the Advanced Vehicle Research Center Reserve. These funds may be transferred to the Department of Commerce for allocation to the Advanced Vehicle Research Center of North Carolina, Inc. for the construction of and operation of the center.	\$3,750,000	NR
59 Land Loss Prevention Project	\$46,000	R
Increase funding for the Land Loss Prevention Project to aid in the legal representation of financially distressed small farmers and rural landowners.	\$250,000	NR
60 North Carolina Association of Community Development Corporations (NCACDCs)		
Increase the General Fund appropriation for NCACDCs.	\$200,000	NR
61 Minority Support Center		
Provide funds for the Minority Support Center to support the Generations Credit Union and the Latino Community Credit Union.	\$1,457,138	NR
62 Community Development Initiative (CDI)		
Increase the General Fund appropriation for CDI.	\$500,000	NR
63 NC Institute of Minority Economic Development		
Increase funding for the NC Institute of Minority Economic Development.	\$500,000	NR
e-NC Authority		
64 Transfer the e-NC Authority	\$500,000	R
Transfer funds from the Rural Center's fund code to the Department of Commerce's State-Aid fund code. Historically the program was administratively located within the Rural Center's budget.		

Budget Changes	\$546,000	R
	\$6,657,138	NR
Total Position Changes		
Revised Total Budget	\$18,925,223	

N.C. Biotechnology Center

GENERAL FUND

		FY 06-07	
Total Budget Approved 2005 Session		\$10,583,395	
Budget Changes			
65 Increase Funding for Biotechnology Center	\$1,500,000		R
Provide funds for the Biotechnology Center.	\$500,000		NR
66 Regional Offices	\$500,000		R
Provide funds to support the Biotechnology Center's regional offices.			
Budget Changes		\$2,000,000	R
		\$500,000	NR
Total Position Changes			
Revised Total Budget		\$13,083,395	

Rural Economic Development Center

GENERAL FUND

		FY 06-07
Total Budget Approved 2005 Session		\$25,052,607
Budget Changes		
Rural Center		
67 Transfer the e-NC Authority	(\$500,000)	R
Transfer funds from the Rural Center's fund code to the Department of Commerce's State-Aid fund code. Historically the program was administratively located within the Rural Center's budget. In S.L. 2005-276 the Rural Center was appropriated \$20 million recurring, with \$500,000 allocated to the e-NC Authority.		
Budget Changes		(\$500,000) R
Total Position Changes		
Revised Total Budget		\$24,552,607

**JUSTICE
&
PUBLIC SAFETY
Section I**

Judicial

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$345,760,410

Budget Changes

1 Access to Civil Justice Funds	\$1,000,000	R
Appropriates \$1 million R to the State Bar to increase the funds available to various legal services programs in the state under the Access to Civil Justice Act. These funds shall be apportioned to the programs based on the allocations from the fee income currently passed through to the Bar for this purpose.		
2 Increase Dispute Settlement Center Funding	\$131,418	R
Restores a 2003 recurring cut to the pass-through for Dispute Settlement Centers, and provides \$80,000 for a one-time across-the-board increase for the local programs.	\$80,000	NR
Administration		
3 Technology Initiatives	\$5,118,632	R
Provides a mix of recurring and non-recurring money for critical technology projects in the AOC, as follows:	\$1,350,000	NR
	30.00	
1) rewrite obsolete processing systems for clerks and district attorney/public defender cases, including required data cleanup to implement a statewide warrant repository (NCWARE);		
2) new initiatives related to court, civil eFiling, electronic payments, and electronic traffic court;		
3) maintenance and enhancement of existing applications including eCitation and Casewise/Jwise.		
The non-recurring funds in this item are appropriated to the Court Information Technology Fund created in GS 7A-343.2, and as such, shall not revert.		
4 Innocence Claim Review Commission	\$160,134	R
Establishes staff for the Innocence Claim Review Commission, pending passage of House Bill 1323. The effective date for these positions is January 1, 2007.	\$50,579	NR
	3.00	
Appellate		
5 Justice Building Renovation	\$512,000	NR
Renovations to the Justice Building are scheduled to continue into FY 2006-07, but funds for the temporary relocation of staff are only budgeted for FY 2005-06. This item appropriates funds to continue leasing space through 2006-07 fiscal year and to cover moving expenses for the Supreme Court and the AOC.		

6 New Court of Appeals Positions	\$108,990	R
Appropriates funding for one new Staff Attorney I and one new Appellate Clerk I to address increases in appellate workload and to expedite termination of parental rights cases. These positions have been annualized for a July 1, 2006, effective date.	\$14,467	NR
	2.00	

District Attorneys

7 New Prosecutors and Support Staff	\$3,820,851	R
Provides funds for 90 new Assistant District Attorneys and 9 Victim Witness Legal Assistants. The Assistant District Attorney positions will be allocated based on the workload formula adopted by the Conference of District Attorneys. The WLAs will be allocated to the following districts:	\$416,124	NR
10 -- Wake (2 positions)	99.00	
12 -- Cumberland		
15B-- Orange, Chatham		
16B-- Robeson		
19A-- Cabarrus		
25 -- Burke, Caldwell, Catawba		
26 -- Mecklenburg		
28 -- Buncombe		

These positions are effective January 1, 2007.

8 Open File Discovery Project	\$3,000,000	NR
Due to recent legislation requiring open discovery in criminal cases, there is need for an automated evidence tracking system that will register the articles of evidence, track their use, and verify that the articles have been disclosed to the appropriate parties as required by law. This item appropriates \$3 million NR to the Court Information Technology Fund created in GS 7A-343.2, and as such, these funds do not revert.		

Equipment and Other Reserves

9 Critical Equipment Needs	\$2,000,000	R
Provides non-recurring funds to replace essential technology and office equipment that is six years or older. Non-recurring funds are also recommended for the replacement of audio machines in District Court, and for telephone systems that are ten years or older. In addition, recurring funds are recommended for the continued replacement of outdated equipment and systems.	\$3,800,000	NR
10 Equipment for New Courthouses	\$110,000	NR
Appropriates funds for new telephone systems and LAN equipment in the new courthouses located in Gay and Harnett Counties.		

Trial Courts

11 Split Prosecutorial District 19B	\$217,192	R
Split prosecutorial district 19B (Randolph, Montgomery, Moore) into 19B (Randolph, Montgomery) and 19D (Moore). This realigns the prosecutorial district on the same lines as the Superior Court district. This item will be effective January 15, 2007.	4.00	

12 New Deputy Clerk Positions	\$1,323,900	R
Additional deputy clerks are needed to address significant increases in certain types of cases such as foreclosures and estate cases. The positions will be assigned by the Director of the Administrative Office of the Courts. These positions will be effective on January 1, 2007.	\$184,350	NR
	75.00	
13 New District Court Judge Positions	\$1,145,868	R
Provides funding for seventeen new District Court Judges in the following districts:	\$167,160	NR
	17.00	
3B -- Craven, Carteret, Pamlico		
6A -- Halifax		
10 -- Wake		
11 -- Johnston, Lee, Harnett		
14 -- Durham		
15B- Orange, Chatham		
17A- Rockingham		
18 -- Guilford		
19B- Randolph, Montgomery, Moore		
19C- Rowan		
20B- Union		
25 -- Burke, Catawba, Caldwell		
26 -- Mecklenburg		
27A- Gaston		
27B- Cleveland, Lincoln		
28 -- Buncombe		
30 -- Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain		
These positions are effective January 15, 2007.		
14 New Magistrate Positions	\$240,978	R
Appropriates funding for six new magistrates. These positions are needed to meet the magistrate staffing levels set forth in GS 7A-133. These positions have been annualized for a July 1, 2006, start date.	\$24,984	NR
	6.00	
These magistrates will be assigned in the following counties: Carteret, Greene, Alamance, Robeson, Montgomery, and Gaston.		
15 New Guardian ad Litem Program Staff	\$743,130	R
Provides funding for thirteen new Guardian ad Litem staff positions to address significant increases in caseloads. These positions include two program assistants and eleven regional program supervisors.	\$37,231	NR
	13.00	
16 New District Court Judicial Support Staff	\$200,845	R
Provides funding for five new District Court Judicial support staff positions (Judicial Assistant I). These positions are needed to support the recently established judgeships, expansion of family mediation, and other arbitration and mediation efforts. These positions have been annualized for a July 1, 2006, start date.	\$19,080	NR
	5.00	
17 Expansion of Custody Mediation Program	\$558,074	R
Appropriates funding to expand the Custody Mediation Program into the final remaining Judicial Districts, as required by GS 7A-494(a). This expansion will require the establishment of 7.75 new support staff. These positions have been annualized for a July 1, 2006, effective date.	\$38,912	NR
	7.75	

18 Recurring Funds for Family Court Program	\$300,400	R
Provides funding to make the Wake Family Court permanent and to establish two new Family Court Case Coordinator positions in Cumberland and Mecklenburg Counties to meet rising caseloads.	\$8,372	NR
	5.00	
19 Expansion of Drug Treatment Court	\$238,092	R
Appropriates additional recurring funds for statewide Drug Treatment Court operations (\$49,992), as well as for three Drug Treatment Court case coordinator positions to replace federal funding that is expiring.	\$17,562	NR
	3.00	
20 Interpreter Fee Payments		
Fully funds interpreter fee payment line item. The current budget for interpreter fees is insufficient to support the total expenditures for this service, which must be provided as required by statute. This expansion is provided on a nonrecurring basis for this fiscal year.	\$775,000	NR
21 Drug Treatment Court for Pre-Plea Offenders		
Appropriates \$300,000 NR to sustain Drug Treatment Court operations in judicial districts where this sanction has been provided for pre-plea offenders. These funds may be used to purchase treatment and case coordination services for this target population.	\$300,000	NR
22 Business Court Expansion	\$236,206	R
Provides funds for a Business Court site in Wake County.	\$11,015	NR
	2.00	
23 Eliminate Reserve for HB 1048	(\$1,869,834)	R
Eliminates the \$1.8 million reserve established in SB 622 for judicial and prosecutorial staff pending the passage of House Bill 1048, Governor's DW Recommendations.		
24 Increase Juror Fees	\$500,000	R
Appropriates funds to raise the fee for jurors from \$12 per day to \$12 per day for the first day of service, \$20 per day for days 2-5, and \$40 per day thereafter. Grand jurors would be raised from \$12 to \$20.		
Budget Changes	\$16,174,876	R
	\$10,916,836	NR
Total Position Changes	271.75	
Revised Total Budget	\$372,852,122	

Judicial - Indigent Defense

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$88,648,414

Budget Changes

25 Attorney Fee Payments for Indigent Defense		
Non-recurring funds are recommended for unpaid attorney fee applications from fiscal year 2005-06 that need to be carried over to fiscal year 2006-07 due to a funding shortfall.	\$4,500,000	NR
26 Hourly Rate for Private Assigned Counsel	\$1,591,162	R
Provides funding to increase the hourly rate for private assigned counsel in capital cases to \$95 at the trial, appellate, and post-conviction levels. The current rate is \$85, which was set in 1993.		
27 NC Prisoner Legal Services, Inc. Contract		
Appropriates funding for inflationary increases for the contract with Prisoner Legal Services, Inc. (PLS). Current operating costs for this contract are higher than the total contract amount, creating an operating shortfall for PLS.	\$122,438	NR
28 Establish Audit Function	\$66,029	R
Establish an Auditor II position within the Office of Indigent Defense Services to analyze fee applications and effect cost savings by preventing over billing.	\$3,500	NR
	1.00	
29 Equipment for Public Defenders		
Provides non-recurring funds to replace technology and other office equipment in Public Defenders' offices.	\$200,000	NR
Sentencing Services		
30 Increase Sentencing Services		
Appropriates non-recurring funds to partially restore a 2004 cut to this program.	\$200,000	NR
Budget Changes	\$1,657,191	R
	\$5,025,938	NR
Total Position Changes	1.00	
Revised Total Budget	\$95,331,543	

	FY 06-07
Total Budget Approved 2005 Session	\$78,697,271

Budget Changes

CJTSD

31 In-Service LEO Training	\$300,000	NR
Funding is provided to the Criminal Justice Training and Standards Division to develop a new online training and registration system. The system will support Division efforts to provide training and certification services to the state's 29,000 law enforcement officers, 7,000 detention officers, and all 911 operators.		

Law Enforcement

32 SBI Staff Expansion	\$542,284	R
Provides funding for 12 investigative and forensic analysis positions: three field agent positions are effective July 1, 2006 and will be added to the recruitment for the six new meth response agent positions which became effective on June 1, 2006. The remaining nine positions are effective January 1, 2007 when construction of the SBI laboratory expansion is completed.	\$266,153	NR
	12.00	

- 5 SBI Field Agents
- 5 Non-sworn Drug Chemistry Technicians
- 1 Non-sworn Forensic Analyst
- 1 Non-sworn Molecular Geneticist

33 SAFIS Replacement	\$72,180	R
Provide funding to replace state and local equipment for the Statewide Automated Fingerprint Identification System. In addition, funding is provided for one position: Application Development Supervisor.	\$1,891,588	NR
	1.00	

34 SBI Lab Expansion	\$600,000	NR
Funding is provided to purchase two diesel generators and cubicle furniture to accommodate personnel relocating from Bount Street to the SBI campus.		

35 Business Recovery Site	\$353,676	R
Funds are provided for a business recovery site to house the backup computer center being relocated from the Bount Street site. Funding is also provided for telecommunication charges and IT services charges.		

Legal Services

36 Attorney Positions	\$238,757	R
Funding is provided for three positions for the Appellate and Law Enforcement Liaison Sections:	\$13,200	NR
	3.00	
Attorney II (2 positions)		
Attorney III		

- 37 Sex Offender Registry Upgrade

Funding is provided to use contractual services to upgrade the state's Sex Offender Registry to include GPS tracking of offenders and public email notification capabilities.

\$200,000NR
- 38 Receipt-Supported Tort Claims Positions

Using receipts per the signed June 2006 cooperative agreement with the Department of Public Instruction to establish two positions to handle the increased demand for tort claims processing services:

Tort Claims Adjuster
Attorney I

\$229,000R
- 39 NC LEAF

Funding is provided to the NC Legal Education Assistance Fund (NC LEAF) to increase education loan repayment assistance for qualified law school graduates who accept positions with public or non-profit agencies. This amount will increase the NC LEAF continuation budget to \$500,000.

Budget Changes	\$1,435,897	R
	\$3,270,941	NR
Total Position Changes	16.00	
Revised Total Budget	\$83,404,109	

Juvenile Justice & Delinquency Prevention

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$138,873,166

Budget Changes		
Department Management		
40 Positions for Administrative Division	\$115,080	R
Funding is provided to establish two new positions, effective July 1, 2006, to improve operations within the Department's Administration Division:	\$7,000	NR
	2.00	
Auditor II (RG75)		
Purchasing Agent II (RG68)		
41 Reserve for Utility and Fuel Costs		
Non-recurring funds are provided to address increasing utility and fuel costs.	\$351,826	NR
Department Wide		
42 Textbook Purchases	\$50,000	R
Funds are provided to purchase additional textbooks for juveniles committed to DJJCP detention centers and youth development centers. This will increase budget to approximately \$78,000.		
Special Initiatives		
43 Eckerd Wilderness Camps Contract	\$2,240,420	R
Funds are provided to increase the rate for the existing 326 contracted beds from \$110.41/day to \$121.77/day. The adjustment will partially address the difference between the contract rate and Eckerd's current-year, actual operating cost for the seven NC camps (\$135.32/day). In addition, funding is provided to purchase 20 more beds to increase the total number of contracted beds from 326 to 346.		
Youth Development Centers		
44 Operating Reserve and Positions for New Beds	\$556,319	R
Funds are provided to establish an operating reserve for the start-up of new youth development centers scheduled to open between September and December 2007. The original proposal included funds for 59 new positions, as well as funds for training and educational assistance for another 362 positions for five centers. Funding for training and educational assistance is reduced from \$315,700 to \$267,750; the \$267,750 is funded \$133,875 recurring and \$133,875 non-recurring. The changes are designed to account for the fact that a portion of the 421 positions designated to receive these funds have or will have already received training and/or educational assistance. Also, the requested amount in salary and benefits that was intended only for salary adjustment, \$84,000, is eliminated. Finally, the 59 positions requested are reduced to 56. Three positions for the new YDC in Guilford County are eliminated for FY 06/07 due to delays in project startup. The 56 positions are effective at various dates during FY 06/07.	\$133,875	NR
	56.00	

Budget Changes	\$2,961,819	R
	\$492,701	NR
Total Position Changes	58.00	
Revised Total Budget	\$142,327,686	

	FY 06-07
Total Budget Approved 2005 Session	\$1,048,492,502

Budget Changes		
Alcohol and Chemical Dependency		
45 Clinical Substance Abuse Supervisor Positions	\$121,957	R
Legislation passed in 2005 mandates new certification and supervision standards for substance abuse treatment professionals. Supervision standards are one hour of clinical supervision for each 10 hours of counseling for the first 300 hours of treatment counseling and then one hour for every 40 hours thereafter. Adding two supervisors will allow DCC to meet these standards and account for the need for supervision at 22 locations statewide. Positions are effective July 1, 2006.	\$9,021	NR
	2.00	
46 Residential Treatment Programs	\$930,122	R
DCC has been using long term federal grant funds since the mid-1990's to fund long term residential treatment for inmates. These funds are being phased out and will be eliminated by 2007-08. 246 beds are currently used to provide 6 to 12 month residential treatment for inmates with serious substance abuse histories. There is enough federal funding to continue to operate programs and 66 beds at Rowan and Western Youth Correctional Centers for 2006-07. The recommended funding is to continue programs at NCJ W (Vernon's Prison - 34 beds) and Morrison Correctional Center (146 beds).	25.00	
47 DART Cherry Substance Abuse Positions	\$166,745	R
DCC operates 300 residential beds to provide substance abuse treatment for probationers and parolees (primarily DWI) at DART Cherry. Five Substance Abuse Worker positions are recommended to provide improved supervision, especially on evening shifts. Positions are effective July 1, 2006.	\$22,365	NR
	5.00	
48 Evergreen Substance Abuse Treatment Beds	\$89,927	NR
Provide funding to increase the contract for private, minimum custody inmate treatment beds at Evergreen Rehabilitation Center. The funding allows for increasing total contract beds from 90 beds to 95 beds and continuing the requirement for 100% occupancy for FY 06/07 only. The funding is effective October 1, 2006 and is contingent upon approval of an amended contract by the State Purchase and Contract Division. The Department of Correction shall report to the Joint Appropriations Subcommittee on Justice and Public Safety by March 1, 2007, on the Evergreen Rehabilitation Center program and the contract for treatment beds, including the impact of adding five new beds.		

Community Corrections

49 Reserve for Sex Offender Monitoring	\$1,236,448	R
Funding is provided to implement active and passive Global Positioning Systems (GPS) in the Department of Correction to monitor the most serious convicted sex offenders that are under some form of DOC supervision. Funding is dependent on passage of HB 1902, SB 1204 or substantially similar legislation on GPS monitoring of sex offenders.	\$70,770	NR
	5.00	
50 Restore CJPP	\$712,500	R
Restores part of the amount of funds cut from the Criminal Justice Partnership Program in previous years.		
51 Probation and Parole Officer Equipment	\$385,000	NR
Funding to begin replacement of body armor worn by probation and parole officers.		
52 Fund Women at Risk	\$75,000	R
Provides an additional \$75,000 to the Women at Risk program which works with female offenders in Western North Carolina.		

Department Management

53 Medical Claims Management	\$44,463	R
DOC is increasing its efforts to monitor medical claims from outside providers. This action will establish one additional professional staff (Medical Reimbursement Officer II) to supervise the medical claims review process and to help with the integration of the medical claims system with the NCAS State accounting system. Position is effective July 1, 2006.	\$4,583	NR
	1.00	
54 Information Technology Security	\$161,588	R
The 2004 Statewide Security Assessment recommended that DOC improve computer security and establish an IT Security Office. DOC currently has only one position devoted to IT Security. In 2005, DOC requested two positions and security software funding but only the software was funded. Funding is provided for two positions, including an IT Security Manager, effective July 1, 2006.	\$9,167	NR
	2.00	
55 Reserve for Energy Costs	\$9,610,759	NR
For 2005-06, DOC energy costs exceeded the budget by over \$9.6 million. Primary cost increases were for heating and cooling 76 prisons and gasoline costs for prison and probation and parole. This funding is intended to avoid a budget deficit in 2006-07. Funding is non-recurring on the premise that energy costs may stabilize by 2007-08.		
56 Central Engineering Technology	\$30,000	NR
Funding for automated design equipment to allow for more in-house design work.		
57 Central Engineering Equipment	\$240,000	NR
Funding of construction equipment for use in construction of Orange and Caldwell segregation units and for other inmate labor construction projects.		

58 Information Technology Charges	\$450,000	R
Increase funding for service charges and fees for information technology services provided to DOC. Anticipated gap between budget and expenditures is \$4 million dollars in FY 06/07.	\$125,000	NR
59 Upgrade Computer Security Equipment		
Upgrade computer switching equipment at DOC's main computer network hub at Yonkers Road offices and the Lenoir disaster recovery site.	\$325,000	NR
Prisons		
60 Funding for Our Children's Place	\$100,000	R
Funds a program director, contractual services and operating expenses. Our Children's Place is a non-profit organization established to operate the incarcerated mothers program.		
61 Operating Reserve for Tabor Correctional Center	\$95,504	R
Establish reserve for startup costs for prison in Columbus County scheduled to open February, 2008.	\$144,000	NR
	10.00	
62 Increase Prison Bed Capacity	\$1,458,336	R
Prison population projections continue to show population exceeding bed capacity. Funding is recommended to increase bed capacity by a total of 468 beds spread over six prisons. The prisons are three medium custody -- Brown Creek, Harnett, and Lumberton -- and three minimum custody prisons-- Dan River, Tillery, and Tyrrell. This capacity increase is possible by increasing the number of inmates in dormitories and adding additional security, medical and program staff. Non-recurring funding is primarily for inmate bunks and lockers and community college start up costs. The original recommended amount of \$540,000 NR for community college startup is reduced to \$270,000 based on a January 1, 2007 start date. Positions are effective January 1, 2007.	\$594,069	NR
	36.00	
63 Inmate Medical Care	\$10,000,000	R
Medical costs continue to exceed the inmate medical continuation budget. This funding will partially address the budget needs.	\$6,189,510	NR
64 Gang Prevention Initiative	\$256,292	R
DOC received Governor's Crime Commission grants to develop a "Security Threat Group Unit" at Foothills Correctional Institution. The grant funding ends December 31, 2006 so 6 months funding is provided for 06/07. The program targets gang members and is designed to increase supervision of these inmates while providing education and skills that will allow an inmate to renounce gang activity. Positions are effective December 1, 2006.	11.00	
65 Security Positions for new Enterprise Plant	\$131,355	R
Enterprise is opening a new janitorial products plant at Warren Correctional Center. The plant is located off-site and will require nine security positions in order to provide adequate security for 100 inmates. The plant opens in Spring 07 so positions are not effective until February 1, 2007.	\$42,510	NR
	9.00	

66 Inmate Medical - Central Pharmacy	\$147,063	R
Establishes three positions in the DCC Prison Pharmacy: one Pharmacy technician; one Pharmacist; and, a Stock Supervisor. As prison population has grown, the number of prescriptions filled has grown from 550,573 in FY 98-99 to 856,803 in 2004-05 with no increase in staffing.	\$4,500	NR
	3.00	
67 Inmate Medical - Nurses and Records Clerks	\$1,332,322	R
Funding is provided for 18 medical records clerks and 20 Licensed Practical Nurses. Adding the medical clerks will free up nurses to devote more time to nursing duties while adding LPNs will help reduce the general shortage of nurses in the prison system. Positions are effective July 1, 2006.	\$48,960	NR
	38.00	
68 Delayed Opening of Segregation Units		
The completion dates for 40 bed segregation units at Orange and Caldwell Correctional Centers have been delayed from 2006-07 to 2007-08 allowing for a non-recurring reduction. The total reduction is (\$904,430); (\$380,809) for Orange and (\$523,621) for Caldwell.	(\$904,430)	NR
69 Inmate Community Work Crews	\$237,798	R
Authorizes six new inmate community work crews. DCC shall determine which correctional centers and communities have the greatest need. Positions are effective July 1, 2006.	\$163,500	NR
	6.00	
70 Security Cameras		
Funding for additional security cameras for placement in areas such as kitchens, outside yards, and visitation rooms at various prisons.	\$50,000	NR
Budget Changes	\$17,657,493	R
	\$17,254,211	NR
Total Position Changes	153.00	
Revised Total Budget	\$1,083,404,206	

Crime Control and Public Safety

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$35,153,488

Budget Changes		
Administration		
71 Federal Grants Administration	\$63,731	R
Funding is provided for a Federal Grants Accountant to ensure compliance with federal reporting and control requirements:	\$4,000	NR
Accountant II (PG74)	1.00	
72 Information Technology Positions	\$164,112	R
Funding is provided to establish two full-time permanent information technology positions:	2.00	
Business & Technology Specialist (1.0)		
Business & Technology Analyst (1.0)		
Butner Public Safety		
73 Operations and Maintenance	\$103,680	R
Provide funds to meet basic operations and maintenance needs for Butner Public Safety; restore previous budget cuts, inflationary increases, and over budgeted receipts.		
Emergency Management		
74 Planning, Response, and recovery Capabilities	\$578,670	R
Funding is provided to enhance emergency management planning, response, and recovery capabilities by transferring 11 existing positions from temporary receipt-supported to permanent general fund positions:	\$75,000	NR
EM Assistant Director (PG78) (1.0)	11.00	
EM Section Manager (PG76) (2.0)		
EM Section Chief (PG72T) (1.0)		
Community Dev Spec II (PG74) (4.0)		
Community Dev Spec II (PG72) (1.0)		
Community Dev Spec I (PG70) (2.0)		
In addition, \$75,000 NR is provided to support rent, utilities, and other operating cost for the two Division warehouses.		
75 Urban Search & Rescue/Swift Water Rescue	\$440,000	NR
Funding is provided for training and equipment to ensure that the state's Urban Search and Rescue and Swift Water Rescue Teams can meet federal standards. Future federal emergency management funding may be jeopardized if the teams fail to meet the standards.		
76 HAZMAT Regional Response Teams	\$156,956	NR
Provide funds for the state's seven HAZMAT Regional Response Teams. Funds will be used to support the teams' training and equipment replacement.		

Governor's Crime Commission

77 **Gang Violence Intervention and Suppression** \$1,500,000 NR
Funds are provided to the Governor's Crime Commission for competitive grants to be awarded to local government and community agencies for gang violence prevention, intervention and suppression initiatives.

National Guard

78 **Deputy Division Director Position** \$96,080 R
Provide funding to establish a Deputy Division Director position to assist with day-to-day operations and management of federal activities. 1.00

79 **National Guard Pension Fund** \$965,000 R
Funds are provided for the NC National Guard Pension Fund. Effective July 1, 2006, these funds will be used to increase the monthly pension benefit payment to current and future retirees from a maximum of \$150 to a maximum of \$160.

80 **Assistance to NC National Guard Families** \$500,000 NR
Funding is provided for the NCG Soldiers and Airmen's Assistance Fund to provide emergency financial assistance to members and their immediate families who are experiencing financial hardship.

81 **Armory Maintenance & Repair** \$250,000 NR
Funds are provided to address the highest priority state-wide armory maintenance and repair needs such as roof repairs, boiler repairs and replacements, electrical upgrades, fire alarm systems, etc.

State Highway Patrol

82 **New Permanent Positions**
\$945,557 R is provided from the Highway Fund to create 21 permanent positions that are now temporary. The positions include:

Trades worker III (PG61) 8.0
Office Assistant IV (PG69) 8.0
Aircraft Mechanic (PG68) 1.0

Establishes four new additional State Trooper positions.

83 **VIPER Maintenance**
\$208,892 R is provided from the Highway Fund for the maintenance of the VIPER system already built.

Victim & Justice Services

84 **Victims Compensation** \$1,000,000 NR
\$1,000,000 NR is provided to be used for the backlog of approved but unpaid victims' compensation claims.

85 **Claims Investigator Position** \$53,051 R
Funds are provided to establish an additional Law Enforcement Specialist (PG70) position in the Victims' Compensation Services Section to investigate and process claims. In addition, the position will serve as the contact/liaison to the Crime Victims Compensation Commission, law enforcement, and public/private agencies. \$4,000 NR 1.00

Budget Changes	\$2,024,324	R
	\$3,929,956	NR
Total Position Changes	16.00	
Revised Total Budget	\$41,107,768	

**GENERAL
GOVERNMENT
Section J**

Administration

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07
\$58,818,473

Budget Changes

1311 Office of State Personnel

1 International Employment Specialist \$78,915 R

Provides funding to establish a full-time International Employment Specialist (Agency Legal Specialist II) to ensure compliance with federal laws and regulations regarding the employment of foreign nationals.

1.00

531211	Salaries - Appr.	\$63,000
531461	Longevity Pay	\$ 945
531511	Social Sec. Contribution	\$ 4,820
531521	Retirement Contribution	\$ 4,297
531561	Medical Ins. Contribution	\$ 3,854
532714	Travel - Trans. In-State	\$ 1,999

2 EEO Diversity & Special Emphasis Project Mgmt. \$106,596 R

Appropriates funds for an HR Partner position to provide support to agencies and universities in diversity efforts and to independently investigate documented complaints. Also provides funds for INROADS

1.00

531211	Salaries - Appr.	\$61,000
531461	Longevity Pay	\$ 915
531511	Social Sec. Contribution	\$ 4,667
531521	Retirement Contribution	\$ 4,160
531561	Medical Ins. Contribution	\$ 3,854
532714	Travel - Trans. In-state	\$ 2,000
536905	Employer QJT Incentive (INROADS)	\$30,000

3 Mediation Training Staff \$54,645 R

Provides funding to support an Administrative Assistant I for the mediation program which has been shown to be a cost effective way of dealing with employee grievances; and funds additional training.

1.00

531211	Salaries - Appr.	\$30,000
531461	Longevity Pay	\$ 450
531511	Social Sec. Contribution	\$ 2,295
531521	Retirement Contribution	\$ 2,046
531561	Medical Ins. Contribution	\$ 3,854
532714	Travel - Trans. In-state	\$ 1,000
532942	Employee Educational Training	\$15,000

4 Receipt Supported Position - NC Flex Program

Appropriates additional staffing with an HR Partner position to provide services necessary for the program's expansion of participants in community colleges and possibly in the public school system

531211	Salaries - Appr.	\$55,000
531461	Longevity Pay	\$ 825
531511	Social Sec. Contribution	\$ 4,208
531521	Retirement Contribution	\$ 3,751
531561	Medical Ins. Contribution	\$ 3,854
532714	Travel - Trans, In-state	\$ 2,000
Total		\$69,638

1411 State Construction

5 Space Reallocation in Old Revenue Building

Based on the findings of the Space Utilization Study of the Old Revenue Building, space underutilized in the Office of State Auditor is being reallocated to the Department of Secretary of State in order to accommodate the Lobbying Division staff.

\$85,000 NR

These funds include \$54,000 originally included in the 2005 Budget as recurring funds for rent in FY 06-07 for the Lobbying Registration Enhancement. This funding will be used to accommodate costs to reallocate space between the two agencies.

This budget adjustment is related to Item#60 under the Office of the Secretary of State, Lobbyist Registration Reform Division.

6 HUB Contractor Academies

Provides funding for an Engineer (\$60,000) and the costs associated with the training expenses for the HUB Contractor Academy program. HUB academies provide opportunities for minority contractors to learn strategies for successful participation in public construction projects.

\$72,536 R
\$277,464 NR
1.00

Recurring		
531211	Salaries	\$ 60,000
531511	Social Security	\$ 4,590
531521	Retirement	\$ 4,092
531561	Med. Ins.	\$ 3,854
Nonrecurring		
53XXXX	Honorariums	\$ 40,000
532199	Misc. Contractual Services	\$176,464
532714	Transportation - Ground	\$ 5,000
532721	Lodging - In State	\$ 5,000
532811	Telephone	\$ 500
532840	Postage	\$ 1,000
533110	General Office Supplies	\$ 1,000
533720	Educational Supplies	\$ 20,000
534534	Equipment - Computer	\$ 2,500
534711	Software	\$ 1,000
535890	Other Admin. Expense - Workshop/Conference	\$ 25,000

1412 State Property Office

7 State Property Surplus Property Disposal System

In Session Law 2003-284, the department was instructed to develop a State-Owned Real Property Disposal System. The system will continuously identify, evaluate, and dispose of surplus property. All proceeds generated will be returned to the General Fund.

\$400,000 NR

1421 Facilities Management Division

8 Paint Shop Establishment

Provides funding to establish a small paint shop staffed by two Painters (\$30,885 each). These individuals will perform small paint jobs and help coordinate informal bids for larger projects. Currently, all painting jobs are done by contracted services.

\$80,117 R

2.00

531211	Salaries	\$ 61,770
531511	Social Security	\$ 4,726
531521	Retirement	\$ 4,213
531561	Med. Ins.	\$ 7,708
533150	Security & Safety Supp	\$ 800
533510	Clothing & Uniforms	\$ 900

9 Building Repairs

Provides funding for small repairs to aging and deteriorating state buildings. Areas covered would include painting, plumbing, electrical, carpentry, AC systems, and general building repair.

\$321,552 NR

10 Additional HVAC Positions

Provides funding for two (2) HVAC Mechanics (\$37,754 each) and two (2) HVAC Technicians (\$41,094 each) to support the workload. Currently, the existing staff is covering 392,857 square feet of office space per employee while the industry standard is 200,000 square feet per employee. The positions will bring the total per employee to 305,555 square feet.

\$198,331 R

4.00

531211	Salaries	\$ 157,696
531511	Social Security	\$ 12,064
531521	Retirement	\$ 10,755
531561	Med. Ins.	\$ 15,416
533150	Security & Safety Supp	\$ 600
533510	Clothing & Uniforms	\$ 1800

11 Increase for Utility and Fuel Expenses

Additional funds are required to cover the increased cost of electrical, natural gas, propane, and gasoline expenses. The department pays for the electrical and heating services for the downtown governmental complex.

\$263,492 NR

1623 State Capital Police

12 Telecommunicator Position	\$31,843	R
Provides funding for a Telecommunicator to support the statewide alarm computer system that is monitored and managed by the State Capital Police 24 hours a day, 7 days a week. Currently, sworn officers have to be utilized to monitor the system.	1.00	
531211 Salaries	\$ 24,101	
531511 Social Security	\$ 1,844	
531521 Retirement	\$ 1,644	
531561 Med. Ins.	\$ 3,854	
532714 Uniforms	\$ 400	

1731 Council for Women/DV Commission

13 Rape Crisis/Sexual Assault	\$100,000	NR
Provides increased funding for rape crisis and sexual assault services.		
14 Domestic Violence Staffing	\$148,175	R
Provides funding for five (5) Office Asst III (\$22,522 each) to provide support staff for the regional offices. This will assure that all regional directors will have full-time support staff so that they can continue to provide services to the counties they serve.	5.00	
Recurring		
531211 Salaries	\$112,610	
531511 Social Security	\$ 8,615	
531521 Retirement	\$ 7,680	
531561 Med. Ins.	\$ 19,270	
15 Domestic Violence Center Fund	\$350,000	R
Provides additional funds for grants to domestic violence programs awarded from the Domestic Violence Center Fund pursuant to G.S. 50.9.		
16 Council for Women Staffing	\$55,983	R
Provides funding for a Community Development Specialist for the Council for Women.	\$4,000	NR
	1.00	
Recurring		
531211 Salaries	\$ 44,229	
531511 Social Security	\$ 3,384	
531521 Retirement	\$ 3,016	
531561 Med. Ins.	\$ 3,854	
533XXX Operating Expenses	\$ 1,500	
Nonrecurring		
534500 Equipment	\$ 4,000	

1761 Youth Involvement Office

17 Increase Internship Slots	\$88,811	R
Funding is appropriated to support 25 additional summer internship slots.		

1771 Division of Veterans Affairs

18 Increase Funding for Veterans Scholarship Program \$373,824 R

Additional funding is being recommended to support the Veterans Scholarship program. The program has experienced a 20 percent increase in the number of students over the last two years. In addition to the enrollment increase, UNC System's room and board costs have increased as well as tuition for both the UNC System and the community college system. 76.4 percent of the Veterans Scholarship Program is supported by the state's Escheat Fund for need-based students.

Escheat's Fund Receipts \$1,210,176

19 Establish Three Additional Staff \$120,669 R

Provides funding to establish a Processing Assistant III (\$20,955) in Asheville, a District Service Officer (\$32,432) in Durham and a Training Officer (\$36,521).

\$5,175 NR
3.00

Recurring		
531211	Salaries	\$89,908
531511	Social Security	\$ 6,878
531521	Retirement	\$ 6,132
531561	Med Ins	\$11,561
532714	Transportation - Ground (In State)	\$ 4,162
532721	Lodging (In State)	\$ 1,118
532724	Meals	\$ 610
533110	General Office Supplies	\$ 300

Nonrecurring		
534534	PC/Printer	\$ 4,200
534711	Other Computer Software	\$ 975

1861 Commission on Indian Affairs

20 Economic Development Initiative \$115,411 R

Provides funding for two (2) Economic Development Specialists (\$41,366 each) to continue work on the NC Indian Economic Development Initiative.

\$2,000 NR
2.00

531211	Salaries	\$ 82,732
531511	Social Security	\$ 6,329
531521	Retirement	\$ 5,642
531561	Med Ins	\$ 7,708
532721	Lodging	\$ 2,500
532724	Meals	\$ 2,000
532732	ED/NDN Employee Transp	\$ 1,000
532732	ED/NDN Employee Subsistence	\$ 1,000
532732	Workshops/Conferences	\$ 1,000
532811	Telephone Services	\$ 500
532840	Postage/Office Supplies/Printing	\$ 1,500
533110	General Office Supplies	\$ 3,500
532821	Computer/Data Processing Svc	\$ 1,000
534511	Office Furniture	\$ 1,000

XXXX Energy Office

21 Emergency Management Plan		
Provides funding to update the Emergency Management Plan. This funding is to be transferred to Budget Code 34100 for Fund Code 3466.	\$40,000	NR

Budget Changes	\$1,875,856	R
	\$1,498,683	NR
Total Position Changes	22.00	
Revised Total Budget	\$62,193,012	

		FY 06-07
Total Budget Approved 2005 Session		\$10,840,918
Budget Changes		
1210 Field Audit Division		
22	Lease for Fayetteville Branch Office	\$19,064 R
Funding is recommended for the Fayetteville Branch Office to obtain new office space and move from the Office of the Clerk of Court, which is one of the agencies audited by the State Auditor. Government Accounting Standards dictate that independence is necessary to be free both in fact and appearance from personal, external, and organizational impairment to independence. The Office's independence is questioned because audit standards prohibit accepting free office space from audited entities.		
23	Agency Network Troubleshooting Software	\$38,500 R
Funding is recommended for software to assist the auditor in identifying network issues accurately. The "Network Performance Monitoring Service" will be purchased from ITS.		
Budget Changes		\$57,564 R
Total Position Changes		
Revised Total Budget		\$10,898,482

Cultural Resources

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07
\$62,917,147

Budget Changes

1110 Office of the Secretary

24 Facility Construction Engineer Position \$49,210 R

Funding is provided to establish a Facility Construction Engineer I position to design facilities, perform design reviews, monitor construction, and inspect and manage renovations and new construction projects throughout the state. 1.00

531211	SPA Reg Salaries-Approp.	\$39,623
531511	Social Security - Approp.	\$ 3,031
531521	Reg. Retire Contrib-Approp.	\$ 2,702
531561	Med Ins Contrib-Approp.	\$ 3,854

25 Attorney III Position \$106,578 R

Appropriates funding for an Attorney III position that will be located in the Department of Justice to focus on administrative law matters involving personnel, procurement and contracting, organizational development and historical document and artifact recovery. 1.00

531211	SPA Reg Salaries-Approp.	\$89,739
531511	Social Security - Approp.	\$ 6,865
531521	Reg. Retire Contrib-Approp.	\$ 6,120
531561	Med Ins Contrib-Approp.	\$ 3,854

1120 Administrative Services

26 Increase in Administrative Staff \$42,533 R

Funding is provided for an Accountant I position to help the department meet legally mandated and grant specific accounting and reporting requirements in a timely manner. 1.00

531211	SPA - Reg Salaries - Appropriated	\$33,790
531511	Social Security Contribution - Approp.	\$ 2,585
531521	Regular Retirement Contribution - Approp.	\$ 2,304
531561	Medical Insurance Contribution - Approp.	\$ 3,854

1210 Archives & History - Administration

27 Cultural Sharing and Caring Program \$750,000 NR

Funding is appropriated for the creation of the Cultural Sharing and Caring Program. This program will provide ballet and opera in public school systems, and is designed to enhance the teaching and learning of history, arts, and culture in North Carolina by providing for the creation of several education initiatives and expansion of established programs.

1241 State Historic Sites

28 Fire and Burglary Protection	\$288,957	R
Funding is provided to support two (2) positions - Maintenance Mechanic III (\$25,886) and Maintenance Mechanic IV (\$30,045)- that were recommended by the Governor, and a Security Officer II (\$24,101) and 2 Security Guard I (\$20,955 each) positions that were added by the subcommittee. The positions will have responsibility for the installation and maintenance of fire and/or intrusion alarm systems throughout the state and to provide enhanced security at Fort Fisher, the North Carolina Transportation Museum and other historic sites.	5.00	
531211 SPA-Reg Salaries-Approp	\$121,942	
531511 Social Sec. Contrib-Approp	\$ 9,329	
521521 Reg Retire Contrib-Approp	\$ 8,316	
531561 Med Ins. Contrib-Approp	\$ 19,270	
5321xx Security & Misc. Contractual Services	\$ 99,000	
532490 Maintenance Agreement	\$ 20,000	
532714 Transp-Gnd- In State	\$ 6,500	
532721 Lodging - In State	\$ 1,000	
432724 Meals - In State	\$ 1,000	
532942 Other Emp Educational Expense	\$ 1,000	
533900 Other Materials/Supplies	\$ 1,000	
534634 PC Printer Equipment	\$ 500	
534713 PC Software	\$ 100	

1250 Historic Preservation

29 Eastern Office-Humber House	\$13,940	R
Funding is provided to support the operation of the Eastern Office located in the Hunter House in Greenville.		
532184 Janitorial Service Agreement	\$1,780	
532188 Lawns and Grounds Service Agreement	\$1,810	
532199 Misc Contractual Services	\$3,000	
532210 Electrical	\$ 700	
532220 Natural Gas/Propane	\$1,600	
532230 Water & Sewer	\$ 400	
532714 Transportation Ground, In State	\$1,000	
532721 Lodging, In State	\$1,000	
532724 Meals - In State	\$1,000	
532811 Telephone Service	\$ 600	
532812 Telecommunication Data Charge	\$ 300	
533900 Other Materials and Supplies	\$ 750	

1260 Office of State Archaeology

30 Queen Anne's Revenge Archaeology Project	\$247,040	NR
Provides funding to sustain archaeological and historical research on the shipwreck believe to be Blackbeard's Queen Anne's Revenge.		

1320 Museum of Art

31 Monet and Egyptian Treasures Exhibits	\$225,000	NR
Funding is appropriated for payment of the required venue fee for the Egyptian Art exhibit and costs associated with bringing the Monet exhibition to the Museum		

1330 NC Arts Council

32 Grassroots Arts Council		
Provides additional funding for grants in FY 2006-07 that will be awarded through the formal application process.	\$1,000,000	NR
33 Basic Grants Program		
Provides additional funding for grants in FY 2006-07 that will be awarded through the formal application process.	\$650,000	NR

1340 North Carolina Symphony

34 Symphony Education Program		
Provides additional funding in FY 2006-07 to support the North Carolina Symphony's education programs throughout the state.	\$325,000	NR
536936 NC Symphony Society, Inc.	\$325,000	

1480 State Library - Statewide Programs & Grants

35 Aid to Counties		
Provides additional nonrecurring funds to support grants to public libraries in accordance with the formula for State-Aid to Libraries.	\$830,248	NR
36 Digital Preservation Program (State Library)		
Appropriates funding for three (3) positions - Librarian IV (\$39,623), Librarian Consultant II (\$43,157), and Asst. State Librarian (\$49,428). The positions will assist State agencies in understanding and participating in digital preservation efforts to collect, manage, and preserve digital publications and other records of government for long-term public access.	\$200,000	R
	3.00	

531211	Salaries - Appr.	\$132,208
531511	Social Sec. Contribution	\$ 10,114
531521	Retirement Contribution	\$ 9,017
531561	Medical Ins. Contribution	\$ 11,562
532715	Travel - Trans. G'd Out of-state	\$ 4,000
532721	Lodging - in state	\$ 4,000
532724	Meals in state	\$ 4,000
532942	Other - Employee Ed	\$ 7,000
533110	General Office Supplies	\$ 4,000
534630	Literature	\$ 14,100

Department-wide

37 Conversion of Temporary Positions to Permanent Pos	\$672,816	R
Provides funding to convert 20 temporary positions to permanent full time status. The permanent positions will support work for the Museum of History, Queen Anne's Revenge, Tryon Palace, Maritime Museum and historic sites.	20.00	
531211 SPA-Reg Salaries - Approp.	\$520,430	
531511 Social Security Contribution	\$ 39,813	
531561 Retirement Contribution	\$ 35,493	
531561 Medical Insurance	\$ 77,080	

38 Reserve for Utility and Fuel Costs

Appropriates funds for projected increased costs for electricity, natural gas, and propane for the state historic sites and other facilities located throughout the state.

\$19,694 NR

Budget Changes	\$1,374,034	R
	\$4,046,982	NR
Total Position Changes	31.00	
Revised Total Budget	\$68,338,163	

General Assembly

GENERAL FUND

		FY 06-07
Total Budget Approved 2005 Session		\$46,965,432
Budget Changes		
1900 Reserves and Transfers		
39 Reserve for Utility and Fuel Costs		
Funding is appropriated to cover increased electric utility costs.		\$38,284 NR
Budget Changes		
		\$38,284 NR
Total Position Changes		
Revised Total Budget		\$47,003,716

		FY 06-07	
Total Budget Approved 2005 Session		\$5,344,528	
Budget Changes			
1110 Administration			
40 Operating Support		\$100,000	R
Provides funding for operating support which includes travel, communication and data processing services and other services and expenses.			
532390	Repairs	\$ 5,000	
532711	Transportation - Air (In State)	\$10,000	
532714	Transportation - Ground (In State)	\$ 5,000	
532821	Computer/Data Processing Services	\$25,000	
532840	Postage & Delivery	\$ 5,000	
532930	Registration Fees	\$10,000	
533900	Other Material & Supplies	\$15,000	
538166	Transfer to CC&FS	\$25,000	
		\$100,000	R
Budget Changes		\$100,000	R
Total Position Changes			
Revised Total Budget		\$5,444,528	

Housing Finance Agency

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$4,750,945

Budget Changes

8102 HTF State Appropriations

41 Housing Programs		
Funding is provided to increase the resources of the North Carolina Housing Trust Fund in FY 2006-07.	\$5,000,000	NR
42 HTF - 400 Apartment Housing Initiative		
Provides funding to the North Carolina Housing Trust Fund for a 400 apartment initiative recommended by the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. These funds are for financing of the portion of the 400 independent- and supportive-living apartments for individuals with disabilities not able to be financed within the existing means of the North Carolina Housing Finance Agency. Funds for operating assistance for the 400 apartments are located in the Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services section of this report. The apartments shall be affordable to those with incomes at the Supplemental Security Income (SSI) level. A description of this item is also located in the Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services section of this report.	\$10,937,500	NR

8104 NC Housing Foreclosure

43 Continue the Home Protection Pilot Program		
Appropriates funding to continue the pilot in the 26 counties in FY 2006-07.	\$1,500,000	NR

Budget Changes	\$17,437,500	NR
Total Position Changes		
Revised Total Budget	\$22,188,445	

Insurance

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$28,110,582

Budget Changes

1300 Technical Services

44 Communication Specialists		\$130,057	R
Provides funding to convert two (2) Communication Specialists (\$35,000 each) from temporary to permanent status in the call center operations to assist citizens with questions and complaints on Medicare, Medicare Advantage, and Medicare Prescription Drug Plans.		\$12,000	NR
		2.00	
531211 Salaries	\$ 70,000		
531511 Social Security	\$ 5,355		
531521 Retirement	\$ 4,774		
531561 Med. Ins.	\$ 7,708		
532XXX Travel & Training	\$ 8,640		
532512 Rent	\$ 7,160		
532811 Telephone Services	\$ 24,020		
533110 General Office Supplies	\$ 2,400		
534XXX Furniture & Equipment	\$ 12,000		

1500 Office of the Fire Marshall

45 Receipt Supported Positions Conversion		\$295,789	R
It is recommended that the funding source for three positions established in 2005-06 be converted to appropriation support and that sufficient operational support be provided. This action will provide consistency within the division's budget.		\$18,000	NR
		3.00	
531211 Salaries	\$ 210,000		
531511 Social Security	\$ 16,065		
531521 Retirement	\$ 14,322		
531561 Med. Ins.	\$ 11,562		
532*** Travel & Training	\$ 15,600		
532512 Rent / Storage Rental	\$ 14,140		
532811 Telephone Services	\$ 10,500		
533110 General Office Supplies	\$ 3,600		
534XXX Furniture & Equipment	\$ 18,000		

Budget Changes	\$425,846	R
	\$30,000	NR
Total Position Changes	5.00	
Revised Total Budget	\$28,566,428	

FY 06-07

Total Budget Approved 2005 Session		\$753,037
Budget Changes		
1110 Administration		
46 Increase in Operating Budget	\$2,600	R
Provides additional funding to cover travel expenses.		
532714 Transportation - In State	\$1,400	
532721 Lodging - in state	\$ 800	
532724 Meals - In state	\$ 400	
47 Expand Personnel	\$85,833	R
Appropriate funding for a Senior Research Analyst position.		
		1.00
531211 Reg Salaries - Appropriated	\$70,000	
531511 Social Security Contribution - Approp.	\$ 5,355	
531521 Regular Retirement Contribution - Approp.	\$ 4,774	
531561 Medical Insurance Contribution - Approp.	\$ 3,854	
533110 General Office Supplies	\$ 100	
534534 Printer/PC Equipment	\$ 1,300	
534713 PC Software	\$ 500	
Budget Changes		\$88,433
Total Position Changes		1.00
Revised Total Budget		\$841,470

Revenue

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07

\$80,673,250

Budget Changes

1605 Information Technology

50 IT Staffing \$521,059 R

Funding is appropriated for two (2) IT positions per the Governor's recommendations and four (4) positions added by the subcommittee to provide systems applications development, mainframe applications development, PC/desktop hardware/software support, business analysis, and computer operations.

531211 SPA Regular Salaries \$434,992
531511 Social Security Contributions \$ 33,277
531521 Retirement Contributions \$ 29,666
531561 Medical Insurance Contributions \$ 23,124

51 Security for Taxpayer Operating Systems

Provides funding to address the security issues of the taxpayer operating system from questions raised in the 2004 Statewide Security Assessment. \$750,000 NR

532140 Other Information Technology-Consulting Sv. \$100,000
532942 Other Employee Education \$ 30,000
534535 Server Equipment \$263,000
534714 Server Software \$357,000

1623 Personal Taxes

52 Staffing for Tax Hearings \$59,484 R

Provides funds for a Revenue Administrative Officer III position to assist with the increase in administrative tax hearings resulting from increased taxpayer activities brought about by Project Collect Tax and Project Tax Compliance. \$4,581 NR
1.00

531211 SPA Regular Salaries \$47,232
531511 Social Security Contributions \$ 3,614
531521 Retirement Contributions \$ 3,222
531561 Medical Insurance Contributions \$ 3,854

1605 IT
532448 Maintenance Agreement - PC Software \$ 507
534713 PC Software Purchases \$ 401 NR

1681 Administrative Svcs
532811 Telephone Service \$ 350
533110 General Office Supplies \$ 500
534511 Furniture - Office \$ 4,180 NR
534528 Voice Comm Equipment (telephone) \$ 205 NR

Revenue

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1662 Taxpayer Call Center (TACC)

53 Taxpayer Assist. & Collection Ctr. Staffing

Funding provides for the conversion of thirty (30) temporary positions to permanent full time status and adds seventeen (17) new permanent positions. The total cost of the conversion and new positions is \$1,641,036. Part of the cost will be covered by an existing \$400,000 budgeted in temporary wages, which will be moved from the temporary line item to salaries. The remaining \$1,241,036 will come from receipts from the 20% Collection Assistance Fee charged in relationship to Project Collect.

531212	SPA Regular Salaries - Receipts	\$1,146,770
531512	Social Security Contributions - Receipts	\$ 87,728
531522	Retirement Contributions - Receipts	\$ 78,210
531562	Medical Insurance Contributions - Rec	\$ 181,138
532448	Maintenance Agreement - PC Software	\$ 5,405
532811	Telephone Service	\$ 16,450
533110	General Office Supplies	\$ 23,500
534511	Furniture - Office	\$ 76,500 NR
534521	Office Equipment Calculator	\$ 1,700 NR
534528	Voice Comm Equipment (telephone)	\$ 3,400 NR
534528	Voice Comm Equipment (headsets)	\$ 1,048 NR
534528	Voice Comm Equipment (amplifier adapter)	\$ 374 NR
534528	Voice Comm Equipment (headsets)	\$ 113 NR
534534	PC & Printer Purchases	\$ 11,900 NR
534713	PC Software Purchases	\$ 6,800 NR
531312	Temporary Receipts	\$ (400,000)
Total		\$1,139,201
		\$ 101,835 NR

54 Operating Expense Transfer

(\$494,402) R

Transfers 15 positions in the division from General Fund to receipt-support with revenue from the 20% Collection Assistance Fee. The transfer of the positions provides the allocation of State funds to support the four (4) new positions in the IT Division, and one (1) additional position in the Documents and Payments Processing Division that were added by the subcommittee.

-15.00

The following positions are transferred to receipt-support:

Processing Assistant V	784-0000-0075-550	(\$25,892)
Processing Assistant V	784-0000-0075-551	(\$27,414)
Processing Assistant V	784-0000-0075-552	(\$29,476)
Processing Assistant IV	784-0000-0075-553	(\$24,885)
Processing Assistant IV	784-0000-0075-554	(\$24,885)
Processing Assistant IV	784-0000-0075-555	(\$24,885)
Processing Assistant IV	784-0000-0075-556	(\$24,885)
Processing Assistant IV	784-0000-0075-557	(\$24,885)
Processing Assistant IV	784-0000-0075-558	(\$24,885)
Processing Assistant IV	784-0000-0075-559	(\$24,885)
Processing Assistant IV	784-0000-0075-560	(\$24,885)
Processing Assistant IV	784-0000-0075-561	(\$24,885)
Processing Assistant IV	784-0000-0075-562	(\$24,885)
Processing Assistant IV	784-0000-0075-563	(\$24,885)
Processing Assistant IV	784-0000-0075-564	(\$24,885)
531211 Salaries		(\$381,402)
531151 Social Security Contr. - Approp		(\$29,178)
531521 Retirement Contr. - Approp		(\$26,012)
531561 Medical Insurance - Approp.		(\$57,810)

1670 Unauthorized Substance Tax

55 Additional Tax Enforcement Agent and Lease Space

Funding adds one (1) USB Tax Enforcement Agent for a total of 13 agents in the division. Additionally, the USB Tax Division is being relocated to an office outside the Revenue Building, and funding is provided to cover the cost of rent.

\$94,319 R
\$11,907 NR
1.00

521211	SPA Regular Salaries	\$35,134
531511	Social Security Contributions	\$ 2,688
531531	LEO Retirement Contributions	\$ 4,153
521561	Medical Insurance Contributions	\$ 3,854
532133	Employee/ Employment Physicals	\$ 150
532210	Energy Service - Electrical	\$ 4,500
532220	Energy Service - Natural Gas	\$ 1,500
532448	Maintenance Agreement - PC Software	\$ 115
532512	Rent/Lease Buildings/Offices	\$33,000
532714	Transportation - Ground - In State	\$ 5,600
532721	Lodging - In State	\$ 700
532724	Meals - In State	\$ 700
532811	Telephone Service	\$ 350
532814	Cellular Phone Service	\$ 600
533110	General Office Supplies	\$ 500
533510	Clothing and Uniforms	\$ 325
534511	Furniture - Office	\$ 4,200
534521	Office Equipment (calculator)	\$ 100
534528	Voice Comm Equipment (cell phone)	\$ 45
534528	Voice Comm Equipment (telephone)	\$ 200
534529	Custody & Security Equipment	\$ 2,500
534534	PC & Printer Purchases (laptop)	\$ 1,350
534534	PC & Printer Purchases (bag & printer)	\$ 262
534713	PC Software Purchases	\$ 400

1685 Documents & Payments Processing

56 Additional Support for Division

Funding provides four (4) positions in the Governor's recommendations and one (1) added by the subcommittee to process the increase in payments resulting from increased collection activities brought about by Project Collect Tax and Project Compliance.

\$161,444 R
5.00

531211	SPA Regular Salaries	\$120,830
531511	Social Security Contributions	\$ 9,244
531521	Retirement Contributions	\$ 8,240
531561	Medical Insurance Contributions	\$ 19,270
532448	Maintenance Agreement - PC Software	\$ 575
532811	Telephone Service	\$ 1,750
533110	General Office Supplies	\$ 1,535

1850 Lee Tax Credit

57 Add'l Support for William S. Lee Tax Credit Prog		\$171,390	R
The application fee that helps support the William S. Lee Program is not sufficient to fund all the needed personnel. Funding is provided to augment the lack of receipts with GF appropriation that will support four (4) positions to adequately support the program. Of the four positions, two (2) existing - an Economist III and a Revenue Field Auditor II, and a new Information Processing Tech will have GF support, and a new Revenue Administrative Officer III position will be receipt supported.		3.00	
531211	SPA Regular Salaries	\$137,108	
531212	SPA Regular Salaries - Rec	\$ 47,232	
531511	Social Security Contributions	\$ 10,489	
531512	Social Security Contr. - Rec	\$ 3,613	
531521	Retirement Contributions	\$ 9,351	
531522	Retirement Contributions - Rec	\$ 3,221	
531561	Medical Insurance Contributions	\$ 11,562	
531562	Medical Insurance Contr. - Rec	\$ 3,854	
1605 IT			
532448	Maintenance Agreement - PC Software	\$ 230	
1681 Administrative Svs			
532811	Telephone Service	\$ 1,050	
533110	General Office Supplies	\$ 1,000	
534521	Office Equipment (calculator)	\$ 200	
534528	Voice Comm Equipment (telephone)	\$ 400	
Total Requirements:		\$229,310	
Total Receipts		(\$57,920)	
Appropriation		\$171,390	
Budget Changes		\$513,294	R
		\$766,488	NR
Total Position Changes		1.00	
Revised Total Budget		\$81,953,032	

Total Budget Approved 2005 Session

FY 06-07
\$9,369,633

Budget Changes

1110 General Administration

58 Facility Planner I Position

\$42,125 R
\$7,000 NR
1.00

Provides funding to establish a Facility Planner I position and operational support to deliver department-wide programs required by statute, state policy, and business need. The department will improve compliance with all related requirements including employee safety and health, energy conservation, ADA access, Workers' Compensation, document storage, security, and disaster response.

Recurring

531211	Salaries	\$31,204
531511	Social Security	\$2,388
531521	Retirement	\$2,129
531561	Med Ins	\$3,854
532714	Transportation - Ground (In State)	\$500
532724	Meals (In State)	\$1,000
532811	Telephone Service	\$150
532840	Postage	\$200
532850	Printing	\$250
532930	Registration	\$200
533110	Office Supplies	\$250

Nonrecurring

532811	Telephone Service	\$50
532850	Printing	\$250
534511	Furniture - Office	\$3,500
534521	Office Equipment	\$200
534534	PC & Printer	\$3,000

59 Internal Auditor Position

Provides funding to establish an Internal Auditor II position and operating costs to perform risk assessments and performance audits, and to assess the department's performance regarding financial accounting, reporting, and internal controls standards. The position will be responsible for compliance with all laws, regulations, and good business practices.

\$65,945 R
\$6,950 NR
1.00

Recurring		
531211	Salaries	\$53,324
531511	Social Security	\$ 4,080
531521	Retirement	\$ 3,637
531561	Med Ins	\$ 3,854
532714	Transportation - Ground (In State)	\$ 150
532811	Telephone Service	\$ 200
532850	Printing	\$ 250
532930	Registration	\$ 200
533110	Office Supplies	\$ 250
Nonrecurring		
532850	Printing	\$ 250
534511	Furniture - Office	\$ 3,500
534521	Office Equipment	\$ 200
534534	PC & Printer	\$ 3,000

1150 Lobbyist Registration Division

60 Lobbyist Registration Reform

\$135,620 R

Provides funding to reallocate four (4) positions approved in the 2005 Budget to meet the additional lobbying registration requirements that resulted from Senate Bill 612, Amend Lobbying Law, S.L. 2005-456. The Lobbyist Director (\$75,611) is increased from grade level 75 to grade level 82. The three (3) grade level 61 positions are reallocated to an Assistant Director (\$44,229) position at grade level 70, an Investigator (\$46,143) position at grade level 71, and an Agency Legal Specialist III (\$65,926) at grade level 79. All four (4) reallocated positions are funded at the midpoint salary range. The remaining five (5) Administrative Assistant II positions at grade level 65 that were funded in the 2005 Budget are readjusted to the midpoint salary (\$35,770). Additionally, \$31,000 in recurring funds for rent is transferred to the Department of Administration, State Construction Division, for costs associated with reallocating space in the Old Revenue Building to accommodate the Lobbyist Registration Division staff expansion.

The 2005 Budget contained \$389,375 in recurring funds in FY 06-07 for the Lobbyist Registration Enhancement, which included \$54,000 in recurring funds for rent. The \$54,000 is transferred to the Department of Administration, State Construction Division, for costs associated with reallocating space in the Old Revenue Building to accommodate the Lobbyist Registration staff expansion.

531211	Salaries	\$ 165,650
531511	Social Security	\$ 12,672
531521	Retirement	\$ 11,298

This budget adjustment is related to Item #5 under the Department of Administration, State Construction Division.

1210 Corporations Division

61 LLC Notifications and Staff Expansion		\$197,527	R
Provides funding to establish three (3) Processing Assistant IV positions (\$22,426 each) and add .25 position to an existing .75 Information Processing Tech position (\$7,070) to create a full time position. The positions improve the efficiency of the annual report filing process and to continue producing periodic notifications to Limited Liability Companies for annual report filing fees.		\$12,900	NR
		3.25	
Recurring			
531211	Salaries	\$ 74,348	
531511	Social Security	\$ 5,688	
531521	Retirement	\$ 5,071	
531561	Med Ins	\$ 11,562	
532811	Telephone Service	\$ 558	
532XXX	Temporary Agency Services	\$ 63,500	
532840	Postage	\$ 16,000	
532850	Printing	\$ 10,000	
533110	Office Supplies	\$ 7,300	
534711	Other Materials & Supplies	\$ 3,500	
Nonrecurring			
534534	POs & Printers	\$ 12,900	
Budget Changes		\$441,217	R
		\$26,850	NR
Total Position Changes		5.25	
Revised Total Budget		\$9,837,700	

State Board of Elections

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07
\$5,069,307

Budget Changes

1100 Administration

62 Contract Position to Permanent Status

Authorizes the use of receipts from Maintenance of Effort funds to convert a contracted IT Project Manager position to permanent status. 1.00

531211	Salaries	\$75,611
531511	Social Security	\$ 5,784
531521	Retirement	\$ 5,157
531561	Med Ins	\$ 3,854

1200 Campaign Reporting

63 Campaign Finance Staff Expansion

\$585,044 R
\$201,576 NR
11.00

Provides funding to create eight (8) permanent positions and increase the grade level of the Deputy Director (\$75,611) from grade level 75 to grade level 82. The new positions include four (4) Campaign Finance Field Auditors (\$54,956 each), two (2) Campaign Finance Training Specialists (\$44,229 each) and two (2) Compliance Specialists (\$54,956 each). A grade level 65 position is reallocated to a Compliance Specialist (\$54,956).

Provides funding for three (3) time-limited Audit Specialists (\$48,139 each) to address the auditing backlog of campaign finance reports.

Recurring		
531212	Salaries	\$464,935
531512	Social Security	\$ 35,568
531522	Retirement	\$ 31,709
531562	Med Ins	\$ 30,832
532700	Travel	\$ 15,000
534534	General Office Supplies	\$ 7,000

Nonrecurring		
531212	Salaries	\$144,417
531512	Social Security	\$ 11,048
531522	Retirement	\$ 9,849
531562	Med Ins	\$ 11,562
534511	Furniture	\$ 6,000
534534	PCs & Printers	\$ 18,700

1901 Computerized Voter Registration

64 Time Limited Positions (TLP) Conversion

Authorizes the use of receipts from Maintenance of Effort funds to convert nineteen (19) time limited positions to permanent positions. 19.00
This action will enable the State Board of Elections to continue to meet the mandates of S.L. 2005-323.

Budget Changes	\$585,044	R
	\$201,576	NR
Total Position Changes	31.00	
Revised Total Budget	\$5,855,927	

State Budget & Management

GENERAL FUND

Total Budget Approved 2005 Session

FY 06-07
\$6,021,795

Budget Changes

1310 Office of State Budget and Management

65 Results-Based Budgeting		\$135,430	R
Provides funding to introduce results-based budgeting into the state budget process during the fiscal year. The goals are to reintroduce strategic or business planning at agencies, ensure government programs are well-defined, and facilitate the introduction of key program measures. This process will require additional resources, including a Senior Budget Analyst position, training, hardware, software, and budget presentation redesign.		\$166,500	NR
		1.00	
Recurring			
531211 Salaries	\$ 80,000		
531511 Social Security	\$ 6,120		
531521 Retirement	\$ 5,456		
531561 Med Ins	\$ 3,854		
534711 Other Computer Software	\$ 40,000		
Nonrecurring			
534534 PC & Printer	\$ 1,500		
532700 Travel/Other Employee Expense	\$ 55,000		
532141 WAN Support & Service	\$110,000		
66 Administrative Office Support Position		\$43,919	R
Provides funding to establish an Administrative II position for administrative support to be shared by the Economic Research, Management, Data Services, and Statewide Information Technology sections.		\$1,500	NR
		1.00	
Recurring			
531211 Salaries	\$35,000		
531511 Social Security	\$ 2,678		
531521 Retirement	\$ 2,387		
531561 Med Ins	\$ 3,854		
Nonrecurring			
534534 PC & Printer	\$ 1,500		

67 Budget Analyst Position

Provides funding to establish a Budget Analyst position for the Justice and Public Safety section. This position's primary responsibilities will include the Department of Crime Control and Public Safety and will serve as the statewide coordinator for budget policy administration resulting from disasters.

\$61,089 R
\$1,500 NR
1.00

Recurring		
531211	Salaries	\$50,000
531511	Social Security	\$ 3,825
531521	Retirement	\$ 3,410
531561	Med Ins	\$ 3,854
Nonrecurring		
534534	PC & Printer	\$ 1,500

Budget Changes	\$240,438	R
	\$169,500	NR
Total Position Changes	3.00	
Revised Total Budget	\$6,431,733	

State Budget & Management - Special Appropriati

GENERAL FUND

		FY 06-07	
Total Budget Approved 2005 Session		\$5,111,429	
Budget Changes			
1022 OSBM - Reserve for Special Appropriation			
68 Reserve for Moving and Rent Expenses		\$755,232	R
Establishes a reserve for moving and rent expenses for state agencies located in the Bount Street area. These properties are expected to be sold and all state agencies relocated during the 2006-07 fiscal year. Nonrecurring funds are recommended for moving expenses and recurring funds for rent expenses.		\$598,021	NR
Budget Changes		\$755,232	R
		\$598,021	NR
Total Position Changes			
Revised Total Budget		\$6,464,682	

FY 06-07

Total Budget Approved 2005 Session

\$8,295,843

Budget Changes

1130 Escheats Division

69 Escheats

Authorizes the use of receipts on a recurring basis from the Escheats Fund for two (2) Unclaimed Property Auditors (\$37,994 each) to perform audits of unclaimed property holders to ensure their compliance with G.S. 116B. The receipts will also fund on a recurring basis a Securities Analyst (\$32,432) to maintain securities, locate owners, and sell stock on a monthly basis.

531212	Salaries	\$108,420
531512	Social Security	\$ 8,294
531522	Retirement	\$ 7,395
531562	Med Ins	\$ 11,562
533110	Office Supplies	\$ 1,000
534521	Office Equipment	\$ 3,000

1150 Information Services

70 Core Banking System Maintenance

\$201,784

Provide funding for the annual support and maintenance required for the statewide Core Banking System.

1210 Investment Management Division

71 Bloomberg Portfolio Order Management System (POMS)

\$80,000

Provides funding for the annual fee to Bloomberg Portfolio Order Management System (POMS) for the Long Term and Short Term Investment Funds. The POMS system was previously included in the base fee, but Bloomberg started charging for this service as the functionality and support need increased. This action would provide uninterrupted service.

Budget Changes

\$281,784

Total Position Changes

Revised Total Budget

\$8,577,627

Treasurer - Retirement for Fire and Rescue Squa

GENERAL FUND

		FY 06-07	
Total Budget Approved 2005 Session		\$8,651,457	
Budget Changes			
1412 Gen. Fund Contribution to Fire Pension Fund			
72 Increase Retirement Benefits		\$514,000	R
Increases the benefits in the Firemen's and Rescue Squad Workers' Pension Fund from \$163 to \$165 per month for retirees and future retirees effective July 1, 2006.			
Budget Changes		\$514,000	R
Total Position Changes			
Revised Total Budget		\$9,165,457	

TRANSPORTATION
Section K

Highway Fund

HIGHWAY FUND

Total Budget Approved 2005 Session

FY 06-07
\$1,538,908,929

Budget Changes

Administration

1 Administrative Expenses (\$2,500,000) R
Reduces the administration budget for the Department of Transportation.

Aeronautics

2 Rural Airport Development \$2,000,000 R
Expands funding for the current State Aid to Airports program for assistance to rural airports for capital improvement projects.

Division of Motor Vehicles

3 Closure of Thirteen Driver License Offices (\$81,600) R
Reduces the budget for the local driver license offices. Four offices have been closed already and an additional nine will be closed in December 2006. This savings represents disconnecting the data lines for these offices.

4 Customer Traffic Management System \$32,000 R
Provides funds to install automatic queuing systems in 32 additional driver license offices throughout the state. The systems allow for improved customer service and have already been installed in 27 high volume driver license offices. \$448,000 NR

5 License Plate Recall \$1,228,301 NR
Provides funds to replace old license plates that are often in poor condition and provide limited visibility to law enforcement officers. License plates were last recalled in 1990.

6 Driver License Mobile Units \$69,000 R
Provides funding for two additional driver license mobile units. These units will provide licensing and vehicle registration services to areas where population and transaction volumes do not warrant full-time offices. \$391,000 NR

7 On-line Dealer Registration (\$200,000) R
Eliminates funding for development of an online dealer registration system.

DPI - Driver Training Program

8 Driver Education Funding \$457,971 R
Increases the Highway Fund transfer to the Department of Public Instruction for driver education to allow for a projected increase in Average Daily Membership (ADM) in the ninth grade for FY2006-2007.

Ferry Division

9 Ferry Division		
Provides additional funds for the ferry maintenance facility.	\$1,000,000	NR

Information Technology

10 Server Consolidation	\$1,000,000	R
Increases information technology funds to consolidate and replace existing servers to obtain a more economical operations and management system		
11 Software Agreement	\$1,500,000	R
Increases funds to replace Microsoft Office 97 with a newer version to facilitate consistency with external customers and partners.		

Maintenance

12 Automated Weigh Stations		
Provides partial funding to improve and automate weigh stations. The entire effort will cost \$97.4M	\$12,824,782	NR
13 System Preservation	\$78,589,071	R
Provides funds for highway maintenance activities that preserve and extend the life of infrastructure assets, including pavements, bridges, and traffic signal systems.		
14 Contract Resurfacing	\$88,317,347	R
Increases funds for contract resurfacing to offset increased material costs and to prevent further road degradation resulting from increased vehicle miles of travel and increased lane mileage.		

Public Transportation

15 Reduction in New Starts Program		
Reduces funding for the state's New Starts program. The reduction represents decreased expenditures for the Triangle Transit Authority's commuter rail project.	(\$23,400,000)	NR
16 Statewide Grant Program	\$3,000,000	R
Increases state funding to match increased federal funds provided through the federal transportation reauthorization bill.	\$2,400,000	NR
17 Urban and Regional Program	\$2,000,000	R
Increases funds for the State Maintenance Assistance Program for operations assistance to regional, urban, and small urban transit systems. These funds will be used to match the Federal Transit Administration's Section 5307 Urbanized Area Formula Program and Section 5309 Capital Program grants.		
18 Urban/Regional Bus and Facility Program		
Increases funds to assist local governments in matching federal transit administration grants authorized through the latest federal transportation reauthorization bill.	\$2,000,000	NR

Highway Fund

Rail Division

19 Piedmont and Carolinian Operations		
Increases funds to cover the operational costs of the Piedmont and Carolinian passenger trains. This is a one-time increase and will allow the Transportation Oversight Committee to analyze the benefits and make a recommendation about future funding.	\$1,198,750	NR
20 Short-Line Railroads		
Increases funds for the grant programs supporting short-line railroad companies. The funds are used as rehabilitation project grants to strengthen North Carolina's short-line infrastructure.	\$2,000,000	NR

Retirement Contribution

21 Retirement System Contributions	\$1,339,000	R
Increases the state's contribution for FY2006-2007 to provide a 3.0% cost-of-living adjustment to retirees of the Teachers' and State Employees' Retirement System.		

Salary Increases

22 State Funded Compensation Increase	\$26,334,000	R
Provides funds to support a 5.5% annual salary increase for full-time permanent employees in the Department of Transportation and other state agencies whose positions are paid from the Highway Fund.		
23 Salary Adjustment Reserves	\$1,000,000	R
Provides funds for salary adjustments as allowed by Section 29.15 of S.L. 2005-276, as amended by Section 22.15 of SB 1741.		

Small Construction

24 Economic Development		
Provides additional nonrecurring funds for economic development, spot safety, and transportation improvement projects.	\$38,000,000	NR

State Highway Patrol

25 New Permanent Positions	\$765,661	R
Creates 17 permanent positions that are now temporary positions. The positions include: eight Tradesworker III positions at a pay grade 61, eight Office Assistant IVs at a pay grade 59, and one Aircraft mechanic position at a pay grade 68. Establishes four new additional State Trooper positions.	\$179,896 21.00	NR
26 VIPER Network Expansion	\$10,000,000	NR
Provides funding for the continued development and building of the Voice Interoperable Communications Plan for Emergency Responders.		
27 VIPER Maintenance	\$208,892	R
Provides funding for the maintenance of the VIPER system already built.		

Highway Fund

Statutory Adjustments

28 Adjust Secondary Road Construction Funding	\$1,439,500	R
Adjusts funding for secondary road construction based on revised projections in accordance with G.S. 136-44.2(a).		
29 Leaking Underground Storage Tank Fund	(\$150,000)	R
Adjusts funding for Leaking Underground Storage Tank Fund based on revenue projections for the gasoline inspection fee in accordance with G.S. 105-119.18(a)		
30 Adjust Aid to Municipalities	\$1,439,500	R
Adjusts funding for Aid to Municipalities based on revised projections in accordance with G.S. 136-41.1.		

Transfers

31 Leaking Underground Storage Tank Fund Reduction	(\$37,160)	R
Reduces funding to the Leaking Underground Storage Tank Fund to support a newly created position within the Department of Agriculture and Consumer Services. The position will be a Retail Motor Fuel Device Inspector.		
32 Standards Inspector Position	\$37,160	R
Transfers funds from the Highway Fund to the Department of Agriculture and Consumer Services for the support of one Retail Motor Fuel Device Inspector position.	1.00	

Budget Changes	\$206,560,342	R
	\$48,270,729	NR
Total Position Changes	22.00	
Revised Total Budget	\$1,793,740,000	

Highway Trust Fund

HIGHWAY TRUST
FUND

FY 06-07

Total Budget Approved 2005 Session

\$1,135,940,000

Budget Changes

Highway Trust Fund

33 Reduce Transfer of Funds to the General Fund		
Reduces the transfer of funds to the General Fund under G.S. 105-187.9 by \$115 million. This amount is the outstanding balance on the \$125 loan from the Highway Trust Fund to the General Fund in fiscal year 2002-03.	(\$115,000,000)	NR
34 Reduce Transfer to General Fund		
Reduces transfer to General Fund by \$80 million. The \$80 million transfer was implemented to recognize the growth that would have occurred in the sales tax on vehicles that was repealed when the Highway Trust Fund was created in 1989.	(\$80,000,000)	NR
35 Reduction in Transfer of Funds		
Reduces the transfer to the General Fund consistent with G.S. 105-187.9(b)(2).	(\$176,407)	NR
36 Funds for Intrastate System		
Increases funds for the Intrastate System consistent with statutory formulas to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes the budget will be \$597,492,253.	\$100,567,595	NR
37 Funds for Urban Loops		
Increases funds for urban loops consistent with statutory formulas to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. With these changes the budget will be \$241,600,983.	\$40,665,346	NR
38 Funds for Aid to Municipalities		
Increases funds for aid to municipalities (Powell Bill) consistent with statutory formulas to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. The total amount for the Aid to Municipalities is \$62,690,874.	\$10,551,886	NR
39 Funds for Secondary Road Construction		
Increases funds for secondary road construction consistent with statutory formulas to reflect new revenue estimates and changes in the amount transferred from the Highway Trust Fund to the General Fund. The total budget for secondary road construction is \$99,630,348.	\$9,271,360	NR
40 Funds for Program Administration		
Reduces funds for administration consistent with statutory formulas. The maximum allowance for Program Administration will be \$41,728,940.	(\$1,189,780)	NR

Budget Changes	
	(\$35,310,000) NR
Total Position Changes	
Revised Total Budget	\$1,100,630,000

**RESERVES,
DEBT SERVICE
AND
ADJUSTMENTS
Section L**

Statewide Reserves

GENERAL FUND

	FY 06-07
Total Budget Approved 2005 Session	\$1,149,242,725

Budget Changes

A. Employee Benefits

1 State Funded Compensation Increases	\$649,145,003	R
Provide funds to support salary increases for employees of State agencies, departments and universities, community college institutions, and public schools.	\$14,970,657	NR
2 Public School Salary Increases		
Certified Teaching, School Based Administrators and Non-certified Personnel in local Public Schools, State agency based Public Schools, and the NC School of Science and Math.		
Teachers and Instructional Support - Funds are provided to support an experience based step increase for teachers and instructional support personnel (average salary increase of 1.86%) and a flat annual increase in the teacher salary schedule of \$2,250 for Fiscal Year 2006-2007 (total average increase of 8%).		
Principals and Assistant Principals - Funds are provided to support an experience based step increase for school based administrators (average salary increase of 1.75%) and a flat annual increase in the school based administrator salary schedule of \$2,250 for Fiscal Year 2006-2007 (total average increase of 7%). School based administrators who are at the top of the experience based salary schedule will receive a one-time lump sum bonus equivalent to 2%.		
All other Public School Personnel - Provide funds to support a 5.5% annual salary increase.		
3 Community College Salary Increases		
Faculty and Professional Staff - Provide funds to support a 6% annual salary increase and a 2% one-time bonus for full-time permanent Community College faculty and professional staff.		
All other Community College Personnel - Provide funds to support a 5.5% annual salary increase.		
4 University Salary Increases		
EPA Faculty and EPA Non-faculty - Provide funds to support a 6% annual salary increase for full-time permanent EPA faculty and EPA non-faculty.		
All other University Personnel - Provide funds to support a 5.5% annual salary increase.		
5 State Agency/Department Salary Increases		
Provide funds to support a 5.5% annual salary increase for full-time permanent employees of State agencies and departments.		

6 Add Additional Step to the Public School Teacher Salary Schedule	\$10,796,786	R
Adds a 30+ step to the Public School teacher salary schedule. The 30+ step is 2% higher than the current 29+ step.		
7 Fair Minimum Wage for Public School Non-certified Employees	\$8,582,073	R
Provide funds to support a minimum salary of at least \$20,112 for all permanent, full-time non-certified Public School employees and to support proportionate increases to permanent full-time employees working schedules requiring less than 12-months service per year.		
8 University of North Carolina Faculty Recruiting and Retention Fund	\$5,000,000	R
Establishes a Faculty Recruiting and Retention Fund under the Office of the President of the University of North Carolina system to be used, at the discretion of the President, for salary increases for the purpose of recruiting and retaining faculty members as necessary at constituent institutions.		
9 Retirement System Contributions	\$27,107,200	R
Increases the State's contribution for Fiscal Year 2006-07 to provide a 3% cost-of-living adjustment for retirees of the Teachers' and State Employees' Retirement System. This adjustment is funded in part with actuarial gains within the Retirement System.		
10 Retirement System Payback	\$30,000,000	NR
Continue the repayment of funds withheld from the Retirement System in FY 2000-2001 due to the budget crisis. This is the fourth installment of the five-year payback period.		
B. Debt Service		
11 Adjustment to Debt Service Requirements	(\$50,000,000)	NR
Reduces funds for debt service due to revised cash flow requirements and estimates for principal and interest payments.		
C. Information Technology Fund		
12 BEACON/SBIP-HR/Payroll System Replacement	\$7,260,523	R
Provides funds to the Information Technology Fund created by G.S. 147-33.72H for the Office of the State Controller to replace the State's aging human resources and payroll information systems with a new system: Building Enterprise Access for North Carolina's Core Operation Needs (BEACON)/State Business Infrastructure Program (SBIP). This appropriation supports phase one of the project, including system integration, staff training, software maintenance, and ITS data charges.	\$34,527,880	NR
	50.75	
13 Information Technology Attorney Positions	\$298,826	R
Provides funds to the Information Technology Fund created by G.S. 147-33.72H to establish two attorney positions in the Office of Information Technology Services (ITS) to assist with complex information technology procurements.	2.00	
D. Trust Funds		
14 MH/DD/SAS Trust Fund	\$14,390,000	NR
Provides funds to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs established pursuant to G.S. 143-15.3D.		

E. Other Reserves

15 Establish State Emergency Response Account		
Provides funds for the State Emergency Response Account, a new reserve in the General Fund. Funds in the account may be used for State disaster preparation and response programs in accordance with G.S. 166A-6.02.	\$20,000,000	NR
16 Reserve for Heating and Cooling Assistance		
Provides funds to assist needy families with heating and cooling expenses associated with recent increases in utility and fuel costs.	\$10,000,000	NR
17 Reserve for Legal Expenses		
Provides funds to pay legal expenses of the State, when in accordance with G.S. 147-17, the Attorney General advises the Governor that it is impracticable for the office to provide legal services, or for litigation requiring specialized expertise, or where a conflict of interest prevents the Office of the Attorney General from representing the State.	\$1,065,710	NR
18 Pending Ethics Legislation	\$401,871	R
Provides funds to implement House Bill 1843 and House Bill 1844.	\$21,000	NR
	4.00	
Budget Changes	\$708,592,282	R
	\$74,975,247	NR
Total Position Changes	56.75	
Revised Total Budget	\$1,932,810,254	

CAPITAL M

A. Department of Administration

- 1 Veterans Affairs Nursing Homes

Provides capital funds for the design and construction of two 100-bed nursing homes to serve veterans in the State. One home will be sited in the eastern part of the State and one home in the west. The specific sites for these homes have not been selected. The State currently has two VA nursing homes in Fayetteville and Salisbury. These funds provide a 35% required match to secure federal grant funding. The total cost for constructing these facilities is \$24, 438, 096.

\$8,773,300NR
- 2 State Facilities Master Plan

Provides capital planning funds for the development of a new facilities master plan for State operations in Wake County. To the extent that funds are available, the scope of the master plan may be extended to State operations outside of Wake County.

\$1,000,000NR

B. Department of Agriculture and Consumer Services

- 3 Rollins Laboratory - Bio-Security Level 2 Conversion

Provides capital funds to convert a chemistry lab in Rollins Laboratory into a Bio-Security Level 2 lab. This conversion will allow Rollins Laboratory to securely handle certain infectious diseases affecting animals.

\$250,000NR
- 4 Oxford Complex Planning and Design

Provides capital planning funds for property acquisition and necessary capital improvements to establish a new laboratory in Oxford. The U.S. Department of Agriculture has proposed conveying a tobacco research facility to the State for the purpose of establishing the lab. The future purpose of the facility would be to develop a public research laboratory, potentially for avian flu research. DA&CS will also explore the potential for establishing a biotechnology incubator at this lab facility. The proposed facility would also provide a permanent home for the State's Insect Laboratory, currently located in Cary.

\$1,000,000NR
- 5 Tidewater Research Station Improvements

Provides capital funds from timber receipts for land acquisition and capital improvements at the Tidewater Research Station. \$396,600 in timber receipts is authorized for this purpose.
- 6 Plant Conservation Program

Provides capital funds from timber receipts for land acquisitions and related activities for the Plant Conservation Program. Authorized uses also include a study of the Program's management of conservation preserves. \$30,000 in timber receipts is authorized for this purpose.
- 7 Senator Bob Martin Eastern Agricultural Center Improvements

Provides capital funds from timber receipts for planning and capital improvements at the Eastern Agricultural Center.

C. Department of Commerce**8 NC Ports Authority - Container Cranes**

Provides capital funds for the purchase of four container cranes for the Port of Wilmington. The General Assembly appropriated \$9 million to the Authority in FY 2005-06, part of which was used by the Authority for a down payment on the four cranes. The cranes are anticipated to be delivered to the Port of Wilmington in December 2006. The total cost for the cranes project is \$33,244,000 and the balance will be covered by revenue bonds issued by the Authority.

\$7,500,000 NR

D. Department of Crime Control and Public Safety**9 Emergency Management Operations Center**

Provides capital funds for the design and construction of a new Emergency Operations Center that would be located in the lower level of the proposed National Guard Readiness Center. The Readiness Center received federal funds in FFY 2005-06 for planning and design. The National Guard expects to secure federal construction grants in FFY 2006-07 to complete the \$30 million project. The Emergency Operations Center would consolidate most Raleigh-based Division of Emergency Management personnel in one building.

\$8,500,000 NR

10 Marion Transportation Center Motor Fleet Lot

Provides capital funds to perform site preparation and expand the parking lot to house the Center's full fleet of trucks. Currently, the Center stores part of its motor fleet at a Department of Correction facility. The National Guard will soon lose access to the Department of Correction's property.

\$222,700 NR

E. Department of Cultural Resources**11 North Carolina History Education Center**

Provides capital planning funds to design the History Education Center at Tryon Palace Historic Sites and Gardens. The total projected cost for this project is \$31,881,525.

\$1,500,000 NR

F. Department of Environment and Natural Resources**12 Water Resources Development Projects**

Provides funds for the state share of Water Resources Development Projects. Projects are specified in a special provision.

\$20,000,000 NR

13 Hickory Nut Gorge Expansion

Provides capital funds for land acquisitions and necessary improvements to expand the Chimney Rock tract of Hickory Nut Gorge State Park. The total planned expansion is 2,000 acres at a total cost of \$30 million. DNR proposes funding the remaining land acquisitions with Clean Water Management Trust Fund, Natural Heritage Trust Fund, and Parks and Recreation Trust Fund monies.

\$15,000,000 NR

14 NC Zoo - Storage Shed

Provides capital funds for the construction of a 17,000 square foot steel shed to store supplies, equipment, and construction materials that are currently stored in the open. The shed will also secure equipment and materials from theft.

\$452,800 NR

15 Forest Resources District 9 Headquarters		
Provides capital funds for the design and construction of office, workshop, storage, and refrigerated facilities in Sylva.	\$2,164,500	NR
H. UNC System - Board of Governors		
16 Appalachian State University College of Education Building		
Provides capital planning funds for the proposed construction of the College of Education Living Learning Academic Building. Total projected cost for the facility is \$35,000,000.	\$1,820,000	NR
17 Fayetteville State University Science and Technology Complex		
Provides capital planning funds for the proposed science and technology complex. The complex would include laboratory, instruction, research, and office space. The total projected cost for the complex is \$22,000,000.	\$1,000,000	NR
18 NC Agricultural and Technical State University General Classroom Facility		
Provides capital planning funds for the proposed general classroom/instructional facility. Total projected cost for the facility is \$20,000,000.	\$1,000,000	NR
19 NC School of the Arts Library		
Provides capital planning funds for the proposed new library. The total projected cost for the facility is \$24,200,000.	\$1,000,000	NR
20 NC State Engineering Complex III		
Provides capital funds for the design and construction of the third phase of relocating the School of Engineering to Centennial Campus. The 166,700 square foot facility would house the Departments of Mechanical and Aerospace Engineering and Biomedical Engineering. Total cost for this project is \$69.7 million. The General Assembly appropriated \$8.7 million to this project in FY 2005-06.	\$61,000,000	NR
21 UNC-Chapel Hill Genomics Science Building		
Provides capital funds for planning and site preparation for a Genomics Science Building in the Science Complex South. The 210,000 square foot facility has an estimated total cost of \$145,000,000.	\$28,391,775	NR
22 UNC Hospitals at Chapel Hill Master Facilities Plan		
Provides capital funds for UNC Hospitals and the UNC School of Medicine to develop a comprehensive master plan.	\$3,000,000	NR
23 UNC-Greensboro Academic Classroom and Office Building		
Provides capital planning funds for the proposed new general classroom and office building. Total projected cost for the facility is \$43,827,470.	\$2,300,000	NR
24 UNC-Pembroke Residence Hall		
Provides capital planning funds for a proposed 360-bed residence hall. The projected cost for the facility is \$20,000,000.	\$1,000,000	NR
25 UNC-Wilmington School of Nursing		
Provides capital funds for the design and construction of an 80,000 square foot building for the School of Nursing. The General Assembly appropriated \$500,000 in FY 2004-05 and \$2,600,000 in FY 2005-06 for planning.	\$27,000,000	NR

26 Western Carolina University School of Health/Gerontology Building Provides capital planning funds for the School of Health and Gerontological Science building at WCU. The total projected cost for this project is \$46,200,000.	\$2,400,000	NR
27 Winston Salem State University Student Activities Center Provides capital planning funds for a proposed new student activities center. Total projected cost for this facility is \$14,773,560. Amount of receipts available to offset the cost of construction is not known at this time.	\$768,225	NR
28 Dental Schools Planning Provides capital planning funds for the expansion of the School of Dentistry at UNC-Chapel Hill and the establishment of a School of Dentistry at East Carolina University.	\$7,000,000	NR
29 Reserve for Capital Cost Overruns Provides reserve funds for capital projects in the UNC System that lack sufficient available funds to award a construction contract. Priority shall be given to Focus Growth Institutions.	\$2,300,000	NR

I. State Facilities Special Indebtedness

30 Department of Cultural Resources NC Museum of Art Expansion Authorizes the issuance of certificates of participation to complete the planning and construction of a 126,000 square foot expansion of the NC Museum of Art in Raleigh. The expansion would increase exhibit space and visitor services. The total cost of the expansion is \$67 million. \$2.2 million was appropriated in FY 2004-05 and \$10 million was appropriated in FY 2005-06. The City of Raleigh and Wake County have jointly committed \$15 million towards the expansion. The expansion would house the Auguste Rodin gift from the Iris and B. Gerald Cantor Foundation. The total debt authorized is \$40,000,000.
31 DHHS State Public Health Lab / Office of Chief Medical Examiner Authorizes the issuance of certificates of participation to complete the planning and construction of a 205,000 square foot facility to house the State Public Health Lab and the Office of Chief Medical Examiner. The new facility would be located in Raleigh. The total debt authorized is \$101,000,000.
32 DHHS Central Regional Psychiatric Hospital Authorizes an additional \$20,000,000 in certificates of participation to complete construction of the Central Regional Psychiatric Hospital in Butner. Proceeds would fund the purchase and installation of information technology infrastructure as well as other construction needs to finish the project. The General Assembly authorized \$110,000,000 in certificates of participation in S.L. 2003-314 for this facility.
33 DHHS Eastern Regional Psychiatric Hospital Authorizes the issuance of certificates of participation for the planning and construction of a 304-bed psychiatric hospital to replace Cherry Hospital in Goldsboro. The new hospital would also likely be located in Goldsboro. The debt is authorized in installments over three separate fiscal years totalling \$145,500,000.

34 DHHS Western Regional Psychiatric Hospital

Authorizes the issuance of certificates of participation for the planning and construction of a 382-bed psychiatric hospital to replace Broughton Hospital in Morganton. The new hospital would also likely be located in Morganton. The debt is authorized in installments over two separate fiscal years totalling \$162,800,000. The first installment of \$20,000,000 is not authorized until July 1, 2008.

35 Department of Correction Regional Medical Center and Mental Health Center

Authorizes the issuance of certificates of participation for the planning and construction of a new 120-bed medical center and 200-bed mental health center to serve prisoners in the State prison system. The facilities will be located at Central Prison in Raleigh. Total projected cost for the construction of the medical and mental health centers is \$151,864,137. The Department anticipates \$7,864,137 in receipts to devote to this capital project, and an additional \$11,800,000 in repair and renovation funds are dedicated for site development activities. The debt is authorized in installments over four fiscal years totalling \$132,200,000.

36 Information Technology Services Secondary Statewide Data Center

Authorizes the issuance of certificates of participation for land acquisition, planning and construction of a 45,000 square foot data center in Rutherford County. The center would provide data recovery services for State agencies in times of disaster. The center would also provide additional capacity for IT operations across State agencies. ITS currently contracts for disaster recovery services. The total debt authorized is \$24,841,300.

37 UNC Charlotte Center City Classroom Building

Authorizes the issuance of certificates of participation for the planning and construction of a 150,000 square foot classroom building to house graduate and professional programs. Belk College of Business, the College of Architecture, and Lee College of Engineering will move to this uptown facility. The total debt authorized is \$45,827,400.

Total Appropriation to Capital

\$206,343,300 NR

**INFORMATION
TECHNOLOGY
SERVICES
N**

Information Technology Services

INTERNAL SERVICE
FUND

Total Budget Approved 2005 Session		FY 06-07
		\$13,025,000
Budget Changes		
A. IT Operations		
1 Information Technology Attorney Positions	\$298,826	R
Provides funds for the establishment of 2.0 Attorney positions in the Office of Information Technology Services to provide specialized legal services needed for complex information technology projects.	2.00	
2 ITS Activities	\$2,619,500	NR
Continues existing activities including project management assistance, security, asset management, legal support, and legacy system assessment.		
3 ITS Services	\$190,000	NR
Provides services previously supported by cross subsidies in the rate structure, including State portal maintenance, security services, enterprise identity management, and office operations.		
B. Information Technology Projects		
4 BEACON/SBIP-HR/Payroll System Replacement	\$7,260,523	R
Provides funds for the Office of the State Controller to support implementation of the state's new human resources and payroll systems as part of Building Enterprise Access for North Carolina's Core Operation Needs (BEACON)/Statewide Business Infrastructure Program (SBIP).	\$34,930,605	NR
	50.75	
5 BEACON Data Warehousing	\$1,000,000	NR
Provides funding to integrate and deploy the following data warehousing projects as part of BEACON: Department of Revenue-Guest Worker Compliance Project Office of State Personnel-Workforce Planning Project Office of the State Auditor-Business Intelligence Software and Data Warehousing Project.		
Budget Changes		\$7,559,349 R
		\$38,740,105 NR
Total Position Changes		52.75
Revised Total Budget		\$59,324,454

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"Ratified Number" refers to the Session Law number except when preceded by an R, in which case it refers to the Resolution number.

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126	39	1155	208	1848	187
128	262	1231	245	1852	22
143	216	1237	64	1860	197
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767	219	1417	263	1898	17
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2129	78	2358	3	2725	53
2135	89	2402	131	2744	168
2136	90	2405	101	2762	204
2147	217	2406	92	2852	R9
2148	91	2421	93	2868	157
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2165	79	2465	163	2876	R22
2170	252	2468	152	2877	R11
2174	114	2477	98	2878	R10
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