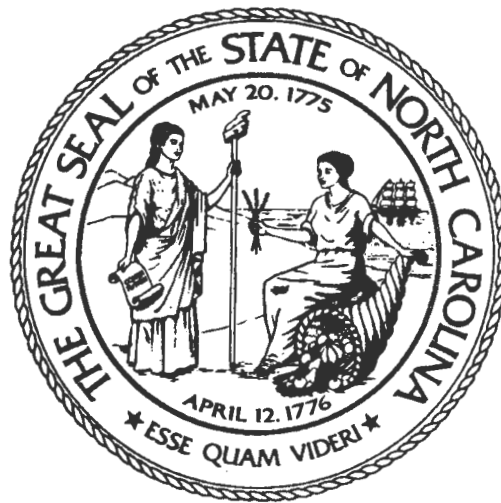


**STATE INFRASTRUCTURE AND
LOCAL GOVERNMENT FINANCING
STUDY COMMISSION**



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1990 SESSION**

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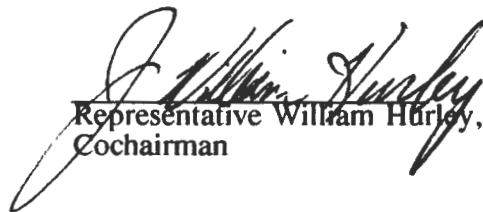


April 19, 1990

TO THE PRESIDENT PRO TEMPORE OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND MEMBERS OF THE GENERAL ASSEMBLY:

The STATE INFRASTRUCTURE AND LOCAL GOVERNMENT FINANCING STUDY COMMISSION herewith submits its report on State and local infrastructure needs and local government financing to the 1989 General Assembly (1990 Session) in accordance with Chapter 802, Section 11.5 of the 1989 Session Laws.


Senator Richard Conder
Cochairman


Representative William Hurley,
Cochairman



Subject: STATE INFRASTRUCTURE NEEDS AND FINANCING STUDY COMMISSION
Authority: 1989 Session Laws, Chapter 802, Part XI, SB 231
(SB 1162-Basnight; SB 202-Plyler; SJR 938-W.N. Martin;
SB 1298-Odom; HB 296-Wiser)
Report by: State Infrastructure Needs and Financing Study Commission
Report to: Speaker; President Pro Tempore
Date: The Commission may submit an interim report
on or before the first day of the 1990 Regular
Session of the 1989 General Assembly. The
Commission shall submit the final report
on or before 1/15/91.

Note: The Legislative Research Commission is also authorized
to study Revenue Laws (HJR 3-Lilley) and Local Revenue
Sources Options (SB 1298-Odom).
(1989 Session Laws, Chapter 802, Sec. 2.1(12), SB 231)

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COMMITTEE PROCEEDINGS

DECEMBER 8, 1989

The State Infrastructure and Local Government Financing Study Commission conducted its first meeting as an organizational meeting. The Commission's members heard presentations from Ms. Sabra Faires, Commission Counsel, and Mr. Linwood Jones, Commission Counsel, on the topics that the General Assembly directed the Commission to address. These topics are listed in Section -- of Senate Bill 231, a copy of which is included as Attachment A. The topics focus primarily on infrastructure needs, how those needs are currently financed by the federal, State and local governments, and potential local revenue sources that may meet these needs.

JANUARY 11, 1990

SUBCOMMITTEE: The subcommittee appointed at the first meeting to review methods for reducing costs associated with the construction and repair of State and local infrastructure held an organizational meeting. Linwood Jones, Commission Counsel, briefed the subcommittee on the various infrastructure and local government finance topics before the Commission. Mr. Jones presented the following outline to organize the topics of discussion:

I. INFRASTRUCTURE NEEDS

A. Wastewater Treatment & Water Supply

- 1) Current federal/state/local fiscal responsibilities
- 2) EPA Wastewater Needs Assessment
- 3) Estimated Water Supply Needs
- 4) Federal and State Revolving Loan Fund
 - a) Eligibility and Priorities
 - b) Funds available and expected to be available, including breakdown of funds for wastewater vs. water supply
 - c) Loans, grants (amt. available for each)
 - d) Problems with the Fund
- 5) Other sources of revenue for water/sewer
 - a) Funds generated by earmarked portions of two local option sales taxes
- 6) How Local Governments Currently Meet These Needs and Problems Faced in Meeting These Needs

B. Solid Waste

- 1) Current State/local fiscal responsibilities

- 2) **DEHNR Landfill Capacity Assessment and Solid Waste Needs Assessment (available from OSB services projections)**
- 3) **Solid Waste Infrastructure & Technology Overview (landfills, incinerators, composting, recycling, etc.)**
- 4) **Solid Waste Revolving Loan Fund**
 - a) **How it works**
 - b) **Amounts available**
 - c) **Eligibility**
 - d) **Problems**
- 5) **Other Sources of Revenue for Solid Waste**
- 6) **Solid Waste Management Plan**
 - a) **Explanation generally**
 - b) **How it will affect infrastructure and capital costs**

C. Jails and Courts

- 1) **Current State/local fiscal responsibilities**
- 2) **Overview of how criminal laws, sentencing, pretrial detention laws, and the 180-day misdemeanor rule affect jail populations**
- 3) **Staff survey on Jail & Courthouse Needs**
- 4) **Governor's Crime Commission Report on Jails in Crisis**
- 5) **Methods of Financing Jails**
 - a) **Problems with bond financing**
 - b) **State planning grants**
 - c) **Satellite Jail Fund**
 - 1) **Purpose**
 - 2) **Eligibility**
 - 3) **Funds available**
 - d) **Court facilities fees -- uses and amounts generated**

D. Public Schools and Community Colleges

- 1) **Current federal/state/local fiscal responsibilities**
- 2) **Current Needs Assessment for public schools**
 - 1) **Amounts available to address needs from:**
 - a. **Public School Building Capital Fund**

- b. Critical School Facility Needs Fund
- c. 1/2 cent local option sales taxes (2)

3) Current Needs Assessment for community colleges

E. Municipal Streets

- 1) State/local fiscal responsibilities
- 2) Powell Bill funds
- 3) Effect of recently-created \$9.1 billion Highway Trust Fund on urban highway and street construction funds
- 4) Other methods of financing streets

F. Airports

- 1) Federal/State/local financing & planning relationship
- 2) Problems with funding rural and smaller airports

G. Natural Gas Utilities

- 1) Uses of natural gas in North Carolina
- 2) Current availability of natural gas in North Carolina
- 3) Regulatory restrictions by Utilities Commission

H. Hospitals

- 1) Breakdown of N.C. hospitals by ownership (county, city, hospital authority, hospital district, private)
- 2) Certificates of Need and related regulatory restraints on hospital facility construction
- 3) Hospital Needs and Financing Problems
 - a. Needs assessment, if available
 - b. Effect of indigent patient care on financial resources
 - c. Health Care Facilities Finance Act

I. Stormwater Utilities

J. Public Health and Social Services

- 1) Infrastructure Needs for public health buildings and social services buildings

- a) State/local fiscal responsibility
 - b) Needs assessment (if available from DHR)
 - c) Current methods of financing public health and social service infrastructure
- 2) Public health and social services programs
- a) Federal/State/local fiscal responsibility
 - b) County administrative and program costs

II. LOCAL GOVERNMENT FINANCING

- A. Sources of Revenue Currently Available to Local Governments**
- 1) List of sources
 - 2) Amounts generated from sources
 - 3) State restrictions on or earmarking of funds from sources
- B. Financing Methods Currently Available to Local Governments**
- C. Potential Sources of Local Revenue Not Currently Authorized Statewide and New Financing Methods**
- 1) Payroll taxes, sales taxes on services, land transfer taxes, increased motor vehicle fees, etc.
 - 2) Authorization of menu for revenue sources vs. local and/or piecemeal authorization
- D. Recent and Pending Legislation on Local Government Finance**
- 1) Senate Bill 559 (Municipal Pooled Projects)
 - 2) Senate Bill 521 (Non-voted Local Government Borrowing)
 - 3) Stormwater utility financing
- E. Effects of elimination of federal revenue-sharing and Tax Reform Act of 1986**
- F. Targeted fiscal assistance for rural areas**

III. OPERATING AND CAPITAL EXPENSES COSTS: ANALYSIS, PLANNING AND COST REDUCTION

- A. Capital Management Plans for Local Governments**
- B. Factors Influencing Local Operating and Capital Costs**
- 1) Building Code and construction process, including permits and reviews
 - 2) Bidding, advertising laws

- 3) Environmental laws, regulations, and reviews
- 4) State mandates for services and programs and the effect on program and infrastructure costs

IV. OTHER TOPICS OF INTEREST TO COMMISSION

A. Taxes Paid to Federal Government vs. Federal Monies Returned

- 1) N.C.'s rank among states in return of federal dollars as percentage of contribution of federal taxes
- 2) Potential ways of increasing N.C.'s share of federal dollars for infrastructure and operating costs.

B. Regionalization and Privatization

- 1) Regional approaches to infrastructure planning and construction
- 2) Privatization and public/private partnerships

C. Creation of permanent advisory commission (like ACIR)

D. State land inventory and State building reviews and permits (likely to be addressed by the LRC Committee on State Capital Assets)

After review and discussion of the outline, the subcommittee determined that some topics should be given a lower priority in order to provide ample time to study the more pressing topics. Since the General Assembly has recently provided major funding for schools, streets, and highways, the subcommittee recommended that those topics be examined only after completion of the other topics. The subcommittee also recommended that any discussion on the funding of Medicaid programs and social services infrastructure by counties be reviewed in the fall after completion of the other topics.

COMMISSION: The full Commission met immediately after adjournment of the subcommittee meeting. Mr. Jones, Commission Counsel, briefed the Commission on the subcommittee's review of the organizational outline. Mr. Jones also explained that he and Ms. Faires had prepared a capital needs survey that would be distributed to all cities and counties (and in some cases, water and sewer authorities) throughout the State. The survey (see Attachment B) sought information for three types of infrastructure: water supply, jails, and courthouses. Mr. Jones noted that the staff would like to have surveyed local governments on all their infrastructure needs; however, it was felt that the local governmental units would be more responsive to a shorter questionnaire, and capital needs information on other infrastructure (such as wastewater treatment and solid waste) is available from other sources.

The Commission requested that staff review and monitor the activities of other study committees whose work might duplicate or overlap with infrastructure and local government finance topics. The Commission also requested that staff conduct another survey for the fall meetings to determine projected long-range capital needs (10 years) for those units of local government that engage in long-range planning.

Ms. Sabra Faires, Commission Counsel, briefed the Commission on the types of governmental entities authorized to provide water supply and wastewater treatment service. Ms. Faires identified the following eight types of entities which provide water and/or sewer service in North Carolina: cities, counties, sanitary districts, water and sewer authorities, metropolitan water districts, metropolitan sewerage districts, county service districts, and county water and sewer districts. A discussion of each entity is provided in Attachment C.

Mr. Bob High, Secretary of the North Carolina Local Government Commission, then gave an overview of the Local Government Commission's role in overseeing the financing of water and sewer projects by local entities. Mr. High noted that each local government entity determines its own method of financing, based on its own infrastructure needs. The governmental unit must adhere to the statutory procedures provided for the issuance of bonds, including procedures for the Local Government Commission's review and approval of bond issuances. Mr. High stated that North Carolina and its local governments have very sound bond ratings.

Ms. Faires, Commission Counsel, then briefed the Commission on the funds generated by the earmarked portions of the two 1/2 cents local option sales taxes. The two taxes, along with an older 1% local option sales tax are currently in effect in all 100 counties. The proceeds from the two 1/2 cents local option sales taxes are allocated back to the counties on a per capita basis, multiplied by an adjustment factor that ranges from .89 to 1.49. The county commissioners of each county then decide whether the municipalities' shares of the proceeds should be allocated on the basis of population or property tax values. Portions of the municipalities' shares are earmarked for water and sewer capital expenditures: 40 percent for the first five fiscal years of the tax and 30 percent for the following five fiscal years. At the end of 10 years, the earmarking would cease under the current law. Currently, approximately \$61 million is earmarked annually under these two 1/2 cents local option taxes for water and sewer capital expenses.

Mr. John Blowe, Supervisor of the Grants Management Unit, Construction Grants Section, Division of Environmental Management (DEHNR), presented a brief background of state and federal involvement in wastewater treatment facilities. The

federal government began making small grants for wastewater treatment facilities to local governments with the passage of P.L. 88-660 in 1956. These grants covered up to 30% of the facility costs. Under P.L. 92-500, enacted in 1972, the federal government greatly enlarged its grants program to provide federal funding for up to 75% of the costs of wastewater treatment facilities, plus an additional 10% for certain types of innovative facilities. The State responded by issuing Clean Water Bonds to pay for one-half of the remaining 25% nonfederal cost, leaving the local governmental units responsible for 12 1/2 percent. In 1985, the federal program was reduced to 55% federal participation, limited to existing wastewater treatment needs only. The 1987 amendments to the Clean Water Act phase out federal grants effective in 1988 and substitute federal seed money to capitalize revolving loan funds through 1994. The amount of federal funding authorized for FY 1990-91 for wastewater treatment is \$44 million, with a 20% match required from the State. The authorized amount will drop in the following years to \$33 million in 1992, \$22 million in 1993, and \$11 million in 1994.

Mr. Blowe explained the revolving loan fund. Three types of assistance -- revolving loan, emergency loan, and high unit cost grant -- are available to eligible governmental units. Loans are subject to a 20-year maximum duration and an interest rate of approximately one-half the market rate. The grants are available to cover the excess costs of those counties with high residential water and sewer rates. Mr. Blowe felt that \$125 to \$150 million annually could be put into the revolving fund for wastewater treatment infrastructure for the next five years without inflating the cost of construction in the marketplace.

Mr. Wally Venrick, Chief of the Public Water Supply Section of the Environmental Health Division, addressed the Committee concerning water supply infrastructure. His

agency regulates all water supply systems in the State that serve either 15 connections or 25 or more persons per day. Approximately 11,000 systems are covered. Congress first brought public water supply systems under federal regulation in 1974. However, with the exception of Farmers Home Administration funds, there are no federal funds for water supply infrastructure as there are for wastewater treatment facilities. The State revolving loan fund has approximately \$2 million for water supply grants and loans.

Mr. Matt Bernhardt, Manager of the Town of Troy, addressed the Commission concerning small-towns and their experience with infrastructure financing. Many of the infrastructure projects recently completed in Troy were built partially with State and/or federal funds. Mr. Bernhardt encouraged the Commission to look at increasing the funding of the Clean Water Revolving Loan Fund since bond issues, FmHA loans, and other revenue sources are inadequate for a small town like Troy.

Mr. Billy Ray Hall, President of the Rural Economic Development Center, then addressed the Commission on the critical relationship between an adequate infrastructure and economic development. The inadequacy of basic infrastructure is an impediment to growth and may threaten the public's safety and health.

Mr. Hall identified three areas of wastewater treatment needs: wastewater system needs, septic tank needs, and off-system needs (such as outhouses and straight-piping into nearby streams). In the wastewater system area, rural needs per person are nearly 75% greater than urban needs per person. Rural areas are also disproportionately served by septic tank systems, with suitable septic tank land becoming more scarce in coastal and mountain counties. Mr. Hall also identified approximately 100,000 households in North Carolina that are not connected to an approved public sewer or septic tank; these

households often uses outhouses, divert their wastes through pipes directly into streams, or are hooked up to failing septic tank systems. Mr. Hall stressed that all three areas of needs must be addressed.

Mr. Hall pointed out that the federal government is gradually withdrawing its financial support for wastewater treatment funding. Only about 25% of the current \$1.2 billion in wastewater system needs can be met by current state and federal resources. The revolving loan fund appears to be the primary funding mechanism for the future for wastewater and water supply. Mr. Hall noted that there is no federal or State money available to address septic-tank related needs, and there is no State and very little federal money for the off-system needs.

Mr. Hall recommended that the Commission re-examine the State/local fiscal relationship with respect to infrastructure financing. As more responsibility for infrastructure financing is shifted to local governments, rural governments in particular are hard-pressed to meet the growing list of needs. Mr. Hall also recommended that the State increase funding for the Revolving Loan Fund and give priority for funds to local governments with large needs but little ability to pay. Mr. Hall suggested that the Commission monitor recent studies on septic tank systems, consider funding a program to address off-system wastewater needs, and consider creating a statewide management growth plan to identify rural needs. He also identified a number of local policy initiatives that are on file with the Commission's minutes in the Legislative Library.

FEBRUARY 8, 1990

SUBCOMMITTEE: The Subcommittee heard a presentation from one of its members, Mr. Ray DeBruhl, on the history of efforts to coordinate the State construction review and permit process. Mr. DeBruhl pointed out that the legislature, other state agencies, and private groups have been studying the issue of fragmentation in the State construction permit process for many years. He added that a Senate bill is pending (SB 185) that would create a study commission to review the approval process for State construction projects, the feasibility of construction permit consolidation, and the feasibility of a clearinghouse for approval of such projects. Mr. DeBruhl felt that the State Infrastructure and Local Government Financing Study Commission would not have adequate time to review these issues itself; therefore, a separate study committee would be warranted.

COMMISSION: Mr. Linwood Jones, Commission Counsel, briefed the Commission on the activities of other legislative study committees and commissions relating to infrastructure and local government financing. Approximately sixteen legislative committees and commissions were identified whose fields of study overlap to some extent with that of the State Infrastructure Commission. Commission members felt that the Commission should focus primarily on wastewater, water supply, solid waste, jails, courthouses, and natural gas, and consider other pieces of infrastructure as time permits.

Senator Plyler and Mr. Ray DeBruhl presented a report from the Subcommittee and suggested that the Commission recommend the creation of a study commission to examine the issue of the fragmented permit and review system for State construction projects and related State construction issues.

Mr. Bruce Strickland, Director of the Finance Center of the Department of Economic and Community Development, presented information to the Commission on the role of the Department and the Finance Center in locating industry in North Carolina and the Industrial Building Renovation Fund. The purpose of the Industrial Building Renovation Fund is to provide an incentive to industries to create jobs in fifty economically-depressed counties throughout the State. The amount of funds available for a particular renovation project or infrastructure project is determined on the basis of \$1,200 per job to be created, up to a maximum of \$250,000 or the cost of the project renovation, whichever is less. The 1989 General Assembly expanded the program to provide emergency economic development assistance in any county experiencing a major economic dislocation.

Approximately 37% of the money in the Industrial Building Renovation Fund has been granted to local governments to improve their wastewater and water supply systems. The improvements generally benefit the industry by providing increased water pressure. Mr. Strickland noted that the Fund had also been used on two occasions to finance natural gas lines. Another portion of the Program involves loans to companies for the renovation of buildings, including reconstruction of roofs and building expansions. Mr. Strickland noted, however, that the Fund needs additional monies in order to continue past November, 1990.

Mr. Bob Chandler, Director of the Division of Community Assistance (DECD), addressed the Commission on the Community Development Block Grants ("CDBG") Program. The CDBG Program is actually two programs: the "entitlement" program for larger cities that obtain grant money directly from the federal Department of Housing and Urban Development and the "State" program for smaller cities and counties.

Seventeen cities fall under the entitlement program and receive their funds directly from HUD. All counties and cities are eligible to receive funds under the State program, with the law requiring at least 60% of the CDBG funds to be spent on projects that primarily benefit low and moderate income persons. The remainder must be spent to improve blighted areas or to address an urgent need. Mr. Chandler noted that HUD is considering raising the 60% minimum to 75%.

The largest categories of funding are the community revitalization and economic development categories, each of which includes many infrastructure projects. Over \$63 million in community revitalization funds has been used since 1982 by participants in the State program for infrastructure -- mainly water lines, sewer lines, and streets. In addition, over \$23.5 million has been used in the economic development category (consisting of loans to a business for a capital expense or the financing of public infrastructure used by the business) for water and sewer system improvements.

Mr. B.A. Parker, Chief of the Community and Business Programs of the Farmers Home Administration, spoke to the Commission about FmHA funding of infrastructure in North Carolina. The Community and Business Programs are divided into three programs: (i) water/wastewater disposal loans and grants, (ii) community facilities loans, and (iii) guaranteed business and industry programs. Water and wastewater disposal loans and grants, available to communities under 10,000 in population, have totaled \$81 million in North Carolina during the last three years. Community facilities loans -- available for clinics, hospitals, libraries, fire and rescue facilities, schools, and similar public service facilities in communities under 20,000 population, have totaled \$22 million in the last three years. The guaranteed business and industry programs have

guaranteed an average of \$10 million in loans each of the last three years to for-profit entities in communities under 50,000 in North Carolina for economic development.

Mr. Parker noted that FmHA favors countywide water and sewer systems, but recent environmental and legal concerns about converting farmland to nonfarm use through the availability of water and sewer lines has forced the agency to consider funding smaller communities with these services. Mr. Parker also noted that legislation is now pending in Congress that proposes to split the Community and Business Programs from FmHA, change the name of the Programs to the Rural Development Agency, and allow the State to prioritize the funding.

Mr. William Redman, Chairman of the North Carolina Utilities Commission, then briefed the State Infrastructure Commission on two topics: the Utilities Commission's regulation of private water and sewer operators and the regulation of natural gas in the State. The Utilities Commission regulates more than 1,000 water and sewer companies, with rates generally set higher than public systems. However, many of the private companies are undercapitalized. The General Assembly recently increased the bond required for a water and sewer franchise, which Mr. Redman felt would help decrease the failure rates of the private companies. Mr. Redman also pointed out that systems constructed by developers often lead to problems when the developer sells or transfers the system to another party to own and operate. The owner/operator is often undercapitalized and arguments occur over whether the developer or the operator is liable for taxes on the transfer.

Mr. Redman also briefed the Commission on natural gas infrastructure. Natural gas is a 2-tiered system, with the Federal Energy Regulatory Commission regulating the

interstate pipe lines and wholesale rates and the North Carolina Utilities Commission regulating the local distribution companies ("LDC's"). In addition, eight cities have their own natural gas systems, none of which are regulated by the Utilities Commission. Mr. Redman pointed out that there are currently 38 counties currently not served with natural gas.

North Carolina now receives gas from two interstate pipelines supplies -- TRANSCO and Columbia Gas Pipeline. TRANSCO is by far the major supplier. Both TRANSCO and Southern Natural Gas Company are seeking to provide additional natural gas supplies to the State. The Utilities Commission has not taken a position on which company should provide the additional supplies.

Mr. Redman noted that the biggest impediment to extending natural gas service to the unserved counties is the capital costs of construction of the new lines. The LDC's who would extend the lines would not recoup their investment unless there are a significant number of users. Mr. Redman felt that it was possible to provide low-interest loans to finance the extension of the gas service into the unserved, less-populated counties. Similar financing helped secure telephone and electrical service to the less populated areas, although these services were usually provided by cooperatives and required enormous amounts of capital.

Mr. Redman discussed House Bill 970, legislation enacted in 1989 that requires the LDC's to file with the Utilities Commission their plans for expansion of natural gas service into unserved territories. The Utilities Commission and the Public Staff will comment on the proposals by May 1, 1990 to the General Assembly. The Commission and the Public Staff are currently in the process of reviewing the reports on file from the

four LDC's. In light of the natural gas, water/sewer, telecommunications, and related needs of communities in attracting industry, Mr. Redman suggested that the Commission consider a revolving infrastructure loan fund to provide low-interest loans for a reasonable period of time to help finance infrastructure development.

Representatives of each of the four natural gas local distribution companies spoke briefly on their service areas and their general expansion plans. The companies are Piedmont Natural Gas, North Carolina Natural Gas, Public Service Company, and Pennsylvania and Southern Gas Company. Details of their comments are on file with the Commission's minutes in the Legislative Library. A complete discussion of natural gas service was delayed until the fall, pending the reports by the Utilities Commission and the Public Staff pursuant to House Bill 970.

Mr. W.G. Plentl, Director of the Division of Aviation (DOT), briefed the Commission on the history of aviation in the State and the programs that exist to assist communities with their airports. There are an estimated 400+ airports in North Carolina (public and private), 76 of which are public airports (with airline service provided at 13 of these public airports). The remainder, excluding military airports, are "general aviation" facilities. "General aviation" includes private, corporate, medical, and aerial pesticide applicator flights. The State also considers several of the private airports an integral part of the State's aviation network.

Mr. Plentl stated that a community's inaccessibility to an airport is a disadvantage in economic development. The General Assembly created a State Aid to Airports program in the mid-1960's and has continued funding the Program. The initial funds were allocated to airports with no airline service. During the 1970's, funding was

substantially increased and eligibility for funds was extended to all publicly-owned airports. In 1988, the General Assembly began funding the State Aid program based on estimated tax revenues generated by aviation in the State. The revenues generated \$5.5 million during the first year alone. Funds can be used for most facilities serving the general public, but not hangars, fuel systems, industrial areas, and related revenue-producing infrastructure. The State pays 50% of the nonfederal share of the costs, except new airports may qualify for 80% State funding of the nonfederal share for selected portions of the initial construction. The increased funding ratio for new airports is designed to encourage and assist in the expansion of the State's airport "system."

The federal government also provides funds for airport infrastructure through the Aviation Trust Fund, funded by a combination of passenger ticket taxes and fuel taxes. Approximately \$1.4 billion is provided nationwide annually through the Aviation Trust Fund. Larger airports with airline service receive 75% federal funding while general aviation facilities compete for a 90% share of federal funds. Mr. Plentl stated that in spite of the larger federal funding ratio for smaller general aviation facilities, the share of funds available was very small.

MARCH 8, 1990

SUBCOMMITTEE: The Subcommittee approved for recommendation to the full Commission Senate Bill 185. Senate Bill 185, introduced in 1989 and currently pending in the Senate, would establish a study commission to review the State construction

process, particularly the fragmented review and permit process for State construction projects. Senate Bill 185 is eligible for consideration during the 1990 short session since it contains an appropriation. The subcommittee recommended removing the 1989-90 fiscal year appropriation since that fiscal year had passed; it also recommended changing the membership of the commission to be created to four Senators, four Representatives, and four members of the public. The Subcommittee also heard from a member of the Commission, Mr. Jim Kirkpatrick, about the proposed construction of Randleman Dam. Discussions on Randleman Dam and the required environmental surveys, permits, hearings, etc. for the Dam were scheduled for the Subcommittee's April meeting.

COMMISSION: Mr. Ed Regan, Assistant Executive Director of the North Carolina Association of County Commissioners, addressed the Commission on solid waste. Solid waste is increasingly becoming a capital-intensive service. Landfill space is disappearing, and two pending EPA requirements will contribute significantly to landfill costs in the future -- liners and post-closure requirements. New landfill acreage will soon have to be lined, equipped with collection and treatment systems, and monitored for leaching and runoff. In addition, after closure of the landfill, the responsible local government must provide financial responsibility for environmental damage for up to 30 years after closure.

Mr. Regan also noted that recent legislative initiatives would also increase solid waste costs. The recently-enacted Senate Bill 111, the Solid Waste Management Act, emphasizes recycling and composting, with a 25% reduction by the year 1993 in the amount of solid waste being landfilled. Mr. Regan estimated that the costs of the EPA regulations and Senate Bill 111's requirements would likely lead to landfill development costs of about \$150,000 per acre (excluding the cost of purchasing the land and post-

closure costs). Mr. Regan noted that incineration is an even more expensive alternative to landfilling, and even incineration leads to air quality problems and residual ashes to dispose of.

Mr. Regan briefed the Commission on Senate Bill 115 -- legislation enacted during the 1989 session which establishes a revolving loan fund to assist counties in funding programs required by the Solid Waste Management Act. Senate Bill 115 also gives counties the unique authority to issue special obligation bonds -- a type of bond secured by revenues from sources other than the project being financed -- for solid waste facilities.

Mr. Regan also addressed the Commission on the topic of jails. Fifteen counties are presently completing an estimated \$136 million in jail construction. He identified short-term jail needs -- i.e., during the next five years -- as approximately \$300 million. Mr. Regan pointed out that general obligation bond financing of jails is unpopular among voters and revenue bond financing is inappropriate since jails generate very little revenue. As a result, lease-purchase financing of jails has become a popular option, with public hearings and Local Government Commission approval required as safeguards against misuse of this type of financing. Mr. Regan recommended that the Commission consider authorizing the use of special obligation bonds for jails.

Mr. Michael Smith, Assistant Director of the Institute of Government, spoke to the Commission on the development of the new jail construction standards. Mr. Smith served as a consultant to the Task Force that developed and recommended to the Social Services Commission the new jail standards.

Mr. Smith noted that the jail standards had remained unchanged since their adoption in 1968. A few years ago, an attempt was made to modify the standards, but the proposals were rejected by the Social Services Commission. The Task Force was created to reconsider new standards, and after a series of meetings and public hearings, it presented a set of new standards to the Social Services Commission. The new standards were recently published in the North Carolina Register; unlike most regulations, they cannot become effective until approved by the Governor.

Mr. Smith briefed the Commission on the square footage requirements for cell construction, dayroom construction, dormitory construction, and related areas. The new and existing construction standards are attached as Attachment D. (Note: The existing standards will continue to apply to jails or portions of jails already in existence).

Mr. Claude Odom, a county commissioner of Hertford County, presented the views of a small, rural county on infrastructure financing for solid waste and jails. Mr. Odom noted that the per capita income of Hertford County is less than \$10,000. The current jail is over 100 years old and a new one, costing \$2.7 million to construct, is being planned. The enormous costs of the jail have forced the county commissioners to raise property tax rates in Hertford County to pay for the jail. The County has also agreed to build a satellite jail to help alleviate overcrowding.

Mr. Odom noted that solid waste represented another major cost to the citizens of Hertford County. The County is working with five other counties to develop a regional landfill because of the costs involved. Solid waste service costs will also increase as a result of Senate Bill 111.

Mr. Wally Hill, Budget and Management Director for Wake County, presented the views of a larger, urbanized county to the Commission. Mr. Hill noted that Wake County had tremendous needs in education; approximately \$1 billion would be needed by the year 2000 in Wake County alone to finance education infrastructure. He noted that Wake County has many years of landfill capacity remaining and that solid waste costs for Wake County through the year 2000 are projected at \$305 million. Wake County is also completing construction on a combined law enforcement center and jail that will house 500 - 600 inmates and detainees. Mr. Hill noted that Wake County would need additional revenue authority beyond the property tax to finance its services and infrastructure in the future.

Mr. Ellis Hankins, General Counsel for the North Carolina League of Municipalities, discussed proposed stormwater legislation with the Commission. The proposed legislation would allow cities and counties to levy "user" fees against owners whose properties experience runoff from rainfall. The funds generated could be used to meet new EPA regulations regarding inventories and possible acquisition of stormwater systems and potential stormwater treatment regulations in the future. Mr. Hankins also requested that the Commission re-examine Senate Bill 559, the Municipal Pooled Loan Fund bill. He noted that he would like to see the bill amended to apply only to water and sewer infrastructure projects.

The chairmen appointed a subcommittee to consider amendments to Senate Bill 559 and the stormwater legislation. The subcommittee was requested to report back to the full Commission at the April meeting with draft legislation.

APRIL 19, 1990

SUBCOMMITTEE: The Subcommittee heard testimony from Mr. John Kime of the Piedmont Triad Regional Water Authority concerning the development of the Randleman Lake Dam project. Originally proposed as a U.S. Army Corps of Engineers project on the Deep River, the project has since been dropped by the Corps and picked up by the local governmental units in the area as a water supply, recreation and flood control project. The Corps spent nearly 20 years and \$6.1 million developing environmental and engineering surveys for the project. A reduction in the size of the project after the local governments took over from the Corps prompted DEHNR to require new environmental assessments. Mr. Kime was concerned that additional environmental, archaeological, and related surveys and the delays caused by those surveys are escalating the costs of building the project. Mr. Kime also encouraged the subcommittee to consider having a "point" person to coordinate the various project permits required by the State. Mr. Ray DeBruhl, subcommittee member, noted that the issue of permit/review coordination could be considered by the study commission that would be created by Senate Bill 185.

Mr. Lee Hauser of the Department of Insurance and Mr. Sam Snowden, Chairman of the Building Code Council, addressed the Committee concerning the enforcement of the Building Code and the qualifications of local building inspectors. Both acknowledged that there are some inspectors who interpret the Code differently, but that the contractor always has the right to appeal a local inspector's decision to the Building Code Council. Mr. Jim Black, subcommittee member, noted that he had on several instances encountered problems with local inspectors who disagreed with architects over the construction of a portion of a facility. Mr. Black was concerned about the length of

time involved in appealing a local inspector's decision and the fact that the local inspector may resent the appeal and thereafter become difficult to work with. Mr. Snowden and Mr. Hauser suggested that perhaps the statute concerning appeals could be made clearer so that all parties understand the right of the contractor to appeal a local inspector's decision. Representative Bowie also suggested that there may be a need for continuing education of local building inspectors beyond the initial certification training received under the Code Official Qualifications Board. Mr. DeBruhl requested that the Department and the Building Code Council commit to working with the study commission to be created by Senate Bill 185 in addressing these problems.

COMMISSION: The State Infrastructure and Local Government Financing Commission held its final meeting prior to the short session to approve a report and legislation for transmittal to the General Assembly. Mr. Linwood Jones, Commission Counsel, briefed the Commission on the contents of the report. Mr. Jones then discussed the Proposed Committee Substitute for Senate Bill 185, which would create a study commission to study the issues of state construction permits, reviews, and procedures. The Proposed Committee Substitute changes the membership of the proposed commission to include 4 public members, deletes the 1989-90 fiscal year appropriation, and makes other conforming changes.

Ms. Sabra Faires, Commission Counsel, then discussed the Proposed Committee Substitute for Senate Bill 559 -- the Municipal and County Pooled Projects legislation. The Proposed Committee Substitute makes the following changes to the bill:

- (1) Financing is limited to water and wastewater projects;
- (2) The 10-year maximum loan term is deleted (although the Commission voted later in the meeting to place a limit on the term of a loan);
- (3) The terms of service of the agencies' members are adjusted;
- (4) The requirement that a non-appropriation clause be placed into the loan agreement is deleted;

- (5) Cities and counties are authorized to mortgage property other than that being financed to secure the loan;
- (6) The references to G.S. 147-69.1 (made unnecessary by the amendment of G.S. 159-30) are deleted;
- (7) An exception is created to the general requirement that intangible tax revenue be used in proportion to other tax revenue for intangible tax revenue used to secure special obligation bonds issued under the Solid Waste Management Loan Program;
- (8) Cities and counties are required to hold a public hearing prior to obtaining a loan from the pooled projects agency; and
- (9) Several conforming, technical changes were also made.

Ms. Faires then discussed a proposed bill entitled AN ACT GIVING COUNTIES THE SAME AUTHORITY THAT CITIES HAVE CONCERNING OPERATION OF A GAS PRODUCTION AND DISTRIBUTION SYSTEM (Draft #90-LJ-12). The proposed bill would allow counties to operate gas production, storage, transmission, and distribution systems and would authorize counties to purchase natural gas and to explore for gas reserves with private companies.

Ms. Faires also discussed a proposed bill entitled AN ACT TO APPROPRIATE FUNDS FOR THE CLEAN WATER REVOLVING LOAN AND GRANT FUND (Draft # 90-LJ-11). The proposed bill appropriates \$8.8 million to the Clean Water Revolving Loan and Grant Fund to serve as the State's 20% match of federal funds to be received.

Mr. Ellis Hankins then briefed the Commission on a bill to be entitled AN ACT CLARIFYING THE POWER OF CITIES AND COUNTIES TO COLLECT CHARGES FOR THE USE OF STORMWATER UTILITIES. This proposed legislation (Draft #90-LJ-14) authorizes cities and counties to fix and enforce rates for stormwater and drainage systems. The rates would apply to property owners whose property sheds or drains stormwater into the stormwater and drainage systems. Rates may vary among different types of users, type of runoff, watersheds affected, and other pertinent factors.

The Commission voted to recommend all 5 pieces of legislation to the short session of the General Assembly. The Commission also voted to recommend the transmittal of these bills with the report, with instructions to the staff to make any typographical changes necessary to complete the report.

Senator Plyler gave the subcommittee's report and noted that the study commission to be created by Senate Bill 185 could study the issue of the Building Code and Randleman Dam. On the advice of Mr. Jones, Commission Counsel, the Commission members amended the Proposed Committee Substitute for Senate Bill 185 to make clear that the issue of Building Code enforcement and the qualifications of local inspectors will be studied.

PROPOSED LEGISLATION A

STATE CONSTRUCTION STUDY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 185*
PROPOSED COMMITTEE SUBSTITUTE
PCS-S185-RN1

Short Title: State Construction Process Study.

(Public)

Sponsors: Senators Goldston, Ezzell, Hunt of Durham and Plyler.

Referred to: Rules.

February 16, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A COMMISSION TO STUDY THE PUBLIC
3 CONSTRUCTION PROCESS AND BUILDING CODE ENFORCEMENT.
4 Whereas, in June of 1982 the Office of State Budget and
5 Management developed a report dealing with rules, regulations, and
6 procedures affecting the capital construction process for construction of North
7 Carolina State Government buildings; and
8 Whereas, that report identified some 40 reviews and/or permits that
9 may be required for State construction projects, spread over 17 State agencies;
10 and
11 Whereas, this complex procedural maze is in addition to any
12 additional requirements imposed by cities, counties, and the federal
13 government; and
14 Whereas, there is confusion as to how to proceed, and little
15 coordination of effort required to complete the process; and
16 Whereas, it may make sense for one agency to administer all
17 building code related issues, but that the diversity of rules and their intended
18 purposes of protection of the public health, public safety, the environment,

1 natural resources and cultural resources almost precludes consolidation of all
2 these functions; and

3 Whereas, from 1957 through 1971 a statutorily established
4 Interdepartmental Building Regulations Committee provided some
5 coordination, but this committee has been abolished; and

6 Whereas, it is just as costly for a project to be delayed during the
7 design phase as during the construction phase; Now, therefore,

8 The General Assembly of North Carolina enacts:

9 Section 1. The State Construction Process Study Commission is
10 created. The Commission shall consist of 12 members: four Senators
11 appointed by the President Pro Tempore of the Senate, four Representatives
12 appointed by the Speaker of the House, and four public members, two each
13 appointed by the President Pro Tempore of the Senate and the Speaker of the
14 House.

15 Sec. 2. The President Pro Tempore of the Senate shall designate
16 one Senator as cochairman and the Speaker of the House shall designate one
17 Representative as cochairman.

18 Sec. 3. The Commission shall:

- 19 (1) Study the process for State approval of public construction
20 projects;
- 21 (2) Study the feasibility of consolidating some of the permitting
22 processes required for construction of public projects;
- 23 (3) Study the feasibility of a clearinghouse approach for State
24 approval of construction projects; and
- 25 (4) Study the enforcement of the State Building Code and the
26 Code Officials Qualification Board's certification and training
27 of local inspectors.

28 Sec. 4. The Commission shall submit a final report of its findings
29 and recommendations to the General Assembly on or before the first day of the
30 1991 Session of the General Assembly by filing the report with the President
31 of the Senate and the Speaker of the House of Representatives. Upon filing its
32 final report, the Commission shall terminate.

33 Sec. 5. The Commission, while in the discharge of official duties,
34 may exercise all the powers provided for under the provisions of G.S. 120-19,
35 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any

1 time upon the joint call of the cochairmen. The Commission may meet in the
2 Legislative Building or the Legislative Office Building.

3 Sec. 6. Members of the General Assembly serving on the
4 Commission shall be reimbursed for subsistence and travel expenses at the rates
5 set forth in G.S. 120-3.1. Public members of the Commission shall be
6 reimbursed for per diem, subsistence, and travel expenses at the rate set forth
7 in G.S. 138-5.

8 Sec. 7. The Commission may contract for professional, clerical, or
9 consultant services as provided by G.S. 120-32.02. The Legislative Services
10 Commission, through the Legislative Administrative Officer, shall assign
11 professional staff to assist in the work of the Commission. The House of
12 Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff
13 to the Commission, upon the direction of the Legislative Services Commission.
14 The expenses relating to clerical employees shall be borne by the Commission.

15 Sec. 8. When a vacancy occurs in the membership of the
16 Commission the vacancy shall be filled by the same appointing officer who
17 made the initial appointment.

18 Sec. 9. All State departments and agencies and local governments
19 and their subdivisions shall furnish the Commission with any information in
20 their possession or available to them.

21 Sec. 10. There is appropriated from the General Fund to the
22 General Assembly for fiscal year 1990-91 the sum of twenty thousand dollars
23 (\$20,000) for the expenses of the Commission.

24 Sec. 11. This act shall become effective July 1, 1990.

PROPOSED LEGISLATION B

MUNICIPAL POOLED PROJECTS FINANCING AGENCY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

D

SENATE BILL 559

Finance Committee Substitute Adopted with Amendments 1 & 2 7/5/
Proposed House Committee Substitute

89

Short Title: Municipal Pooled Projects.

(Public)

Sponsors:

Referred to:

March 21, 1989

1 A BILL TO BE ENTITLED
2 AN ACT CREATING THE NORTH CAROLINA MUNICIPAL POOLED
3 CAPITAL PROJECTS FINANCING AGENCY AND THE NORTH
4 CAROLINA COUNTY POOLED CAPITAL PROJECTS FINANCING
5 AGENCY TO PROVIDE FINANCING FOR THE ACQUISITION,
6 CONSTRUCTION, AND INSTALLATION BY MUNICIPALITIES AND
7 COUNTIES, RESPECTIVELY, OF CAPITAL WATER AND
8 WASTEWATER PROJECTS, INCLUDING THE ACQUISITION OF
9 EQUIPMENT, AND AMENDING CERTAIN GENERAL LAWS.

10 Whereas, the General Assembly finds that in order to promote and
11 preserve their economy and the health, safety, and prosperity of their residents,
12 cities and counties in North Carolina have a need to acquire, construct, and
13 install equipment, capital improvements, and property to help meet the water
14 and wastewater infrastructure requirements of their communities; and.

15 Whereas, the pooling of the financing needs of several cities and of
16 several counties and the issuance of bonds by an instrumentality of the State to
17 finance the cost of water and wastewater projects will reduce the cost of the
18 financing and will increase the number of financing options available by,
19 among other things, giving units of government with intermittent financing
20 needs access to a broader bond market than would otherwise be available to
21 them, reducing bond issuance and marketing expenses, and giving units the

1 opportunity to obtain credit and liquidity enhancement facilities that might
2 otherwise be unavailable or more costly, thus reducing interest costs to the
3 units; and

4 Whereas, the stringent restrictions of the Internal Revenue Code of
5 1986, as amended, have in many instances reduced a unit's flexibility in
6 financing capital projects and have increased the costs of financing capital
7 projects; and

8 Whereas, the Internal Revenue Code of 1986, as amended, places
9 certain restrictions on the investment of the proceeds of bonds issued by states
10 and their political subdivisions and requires that certain earnings on the
11 proceeds of bonds issued by these entities be rebated to the federal government
12 in order for interest on the bonds to not be includable in the gross income of
13 the bond owners for purposes of federal income taxation; and

14 Whereas, the Tax Reform Act of 1986 and the Technical and
15 Miscellaneous Revenue Act of 1988 provide certain exceptions from the
16 Code's restrictions on the investment of bond proceeds for two hundred
17 million dollars (\$200,000,000) of bonds issued for a loan funding program of
18 the North Carolina League of Municipalities, and the North Carolina
19 Municipal Pooled Capital Projects Financing Agency intends to issue two
20 hundred million dollars (\$200,000,000) of bonds under this Chapter that will
21 benefit from the exceptions and thereby benefit the municipalities to which the
22 Agency makes loans; and

23 Whereas, the North Carolina Municipal Pooled Capital Projects
24 Financing Agency intends to issue bonds under this Chapter that will not
25 benefit from the exceptions from the Code's restrictions on the investment of
26 bond proceeds, and none of the bonds issued under this Chapter by the North
27 Carolina County Pooled Capital Projects Financing Agency will benefit from
28 the exceptions to the restrictions; and

29 Whereas, the well-being of residents of cities and counties and the
30 economic and governmental viability and prosperity of cities and counties in
31 North Carolina will be served by establishing two instrumentalities of the State
32 to provide financing through the issuance by the instrumentalities of one or
33 more issues of bonds to provide funds for cities and counties to acquire water
34 and wastewater capital projects, Now therefore:

35 The General Assembly of North Carolina enacts:

36 Section 1. The General Statutes are amended by adding a new
37 Chapter to read:

38 "Chapter 159H.

39 "North Carolina Municipal and County Pooled
40 Capital Projects Financing Act.

41 **§ 159H-1. Short title.**

42 This Chapter is the 'North Carolina Municipal and County Pooled Capital
43 Projects Financing Act' and may be cited by that name.

44 **§ 159H-2. Definitions.**

1 The following definitions apply in this Chapter.

- 2 (1) 'Acquisition.'-- When used to refer to a project, the term
3 means acquisition, construction, improvement, or
4 installation; 'acquire,' 'acquiring,' and other cognates of the
5 word 'acquisition' have the same meaning.
- 6 (2) 'Administrative charges.'-- Charges made by the Agency to
7 a city or a county for providing financing pursuant to this
8 Chapter and may include a charge for financing costs, a
9 charge for the costs of bond and reserve fund insurance, of
10 credit and liquidity facilities, and of interest-rate agreements,
11 a charge in respect of nonasset bond and investment income
12 deficiencies, and a charge for administrative expenses of the
13 Agency incurred in the exercise of its powers and duties
14 conferred by this Chapter.
- 15 (3) 'Agency.'-- The County Agency or the Municipal Agency,
16 individually, as well as the County Agency and the
17 Municipal Agency, collectively.
- 18 (4) 'Association of County Commissioners.'-- The North
19 Carolina Association of County Commissioners, a federation
20 of county governments in the State.
- 21 (5) 'Board.'-- The board of directors of the Agency or any other
22 governing body of the Agency succeeding to the principal
23 functions of the board of directors.
- 24 (6) 'Bonds.'-- The revenue bonds authorized to be issued by the
25 Agency under this Chapter; the term does not include a
26 loan obligation.
- 27 (7) 'City.'-- Defined in G.S. 160A-1(2).
- 28 (8) 'City Council.' -- A council as defined in G.S. 160A-1(3).
- 29 (9) 'Cost.'-- The capital cost of acquiring a water or wastewater
30 project, including:
- 31 a. The costs of doing any or all of the following found
32 necessary or convenient by a city or county:
- 33 1. Acquiring, erecting, providing, developing,
34 furnishing, and equipping.
- 35 2. Reconstructing, remodeling, altering,
36 renovating, replacing, refurnishing, and
37 reequipping.
- 38 3. Enlarging, expanding, and extending.
- 39 4. Demolishing, relocating, improving, grading,
40 draining, landscaping, paving, widening, and
41 resurfacing.
- 42 b. The cost of all property, both real and personal and
43 both improved and unimproved, and of plants, works,
44 appurtenances, structures, facilities, furnishings,

- 1 machinery, equipment, vehicles, easements, water
- 2 rights, air rights, franchises, and licenses used or
- 3 useful in connection with the purpose authorized.
- 4 c. The costs of demolishing or moving structures from
- 5 land acquired and acquiring land to which the
- 6 structures are to be moved.
- 7 d. Financing charges, including estimated interest during
- 8 the acquisition of a project and for six months
- 9 thereafter.
- 10 e. The cost of plans, specifications, studies, reports,
- 11 surveys, and estimates of costs and revenues.
- 12 f. The costs of paying any interim financing, including
- 13 principal, interest, and premium, related to the
- 14 acquisition of a project.
- 15 g. Administrative and legal expenses and administrative
- 16 charges.
- 17 h. The costs of obtaining bond and reserve fund
- 18 insurance and investment contracts, of credit facilities,
- 19 liquidity facilities, and interest-rate agreements, and of
- 20 establishing and maintaining debt service and other
- 21 reserves.
- 22 i. Any other services, costs, and expenses necessary or
- 23 incidental to the purpose authorized.
- 24 (10) 'County.'-- Defined in G.S. 153A-1(3).
- 25 (11) 'County Agency.'-- The North Carolina County Pooled
- 26 Capital Projects Financing Agency created by this Chapter
- 27 or the public body succeeding it in its principal functions or
- 28 upon which are conferred by law the rights, powers, and
- 29 duties given to the Agency by this Chapter.
- 30 (12) 'County Board of Commissioners.'-- The governing body of
- 31 a county established under G.S. 153A-34.
- 32 (13) 'Credit Facility.'-- An agreement entered into with a bank, a
- 33 savings and loan association, or other banking institution, an
- 34 insurance company, a reinsurance company, a surety
- 35 company, or other insurance institution, a corporation, an
- 36 investment banking firm or other investment institution, or
- 37 other financial institution providing for prompt payment,
- 38 whether at maturity, presentment, or tender for purchase,
- 39 redemption, or acceleration, of all or part of the principal or
- 40 purchase price, redemption premium, if any, and interest on
- 41 the following in consideration of the city or county or the
- 42 Agency, as appropriate, agreeing to repay the provider of
- 43 the credit facility in accordance with the terms and
- 44 provisions of the agreement:

- 1 a. A loan obligation payable on demand or tender by
2 the Agency.
- 3 b. Bonds or notes payable on demand or tender by the
4 owner.
- 5 The provider of a credit facility may be located either inside
6 or outside the United States.
- 7 (14) 'Interest-rate agreement.'-- An interest-rate protection
8 agreement, interest liability swap agreement, interest ceiling
9 agreement, interest rate guaranty, or any other contract,
10 other than a bond or note, with a third party that provides
11 for a fixed or variable amount of interest expense payable by
12 the Agency in respect of its bonds or notes.
- 13 (15) 'League of Municipalities.'-- The North Carolina League of
14 Municipalities, a federation of municipal governments in the
15 State.
- 16 (16) 'Loan obligation.'-- A bond, note, contract, loan agreement,
17 or other written agreement of a city or a county that is
18 delivered to the Agency and evidences the city's or county's
19 receipt of loan proceeds from the sale of a portion of the
20 Agency's bonds or from other available money of the
21 Agency and sets forth the terms of the city's or county's
22 agreement to make payments to the Agency in respect of the
23 loan.
- 24 (17) 'Local Government Commission.'-- The Local Government
25 Commission established by G.S. 159-3 and any successor of
26 the Commission.
- 27 (18) 'Municipal Agency.'-- The North Carolina Municipal Pooled
28 Capital Projects Financing Agency created by this Chapter
29 or the public body succeeding it in its principal functions or
30 upon which are conferred by law the rights, powers, and
31 duties given to the Agency by this Chapter.
- 32 (19) 'Notes.'-- The revenue notes or revenue bond anticipation
33 notes authorized to be issued by the Agency under this
34 Chapter; the term does not include a loan obligation.
- 35 (20) 'Par Formula.'-- A provision or formula to provide for the
36 adjustment, from time to time, of the interest rate or rates
37 borne by a loan obligation or a bond or note, including:
- 38 a. A provision providing for adjustment so that the
39 purchase price of the loan obligation or bond or note
40 in the open market would be as close to par as
41 possible.
- 42 b. A provision providing for adjustment based upon one
43 or more percentages of a prime rate or base rate.

- which percentage or percentages may vary or be applied for different periods of time.
- c. For a loan obligation, a provision providing for adjustment based upon adjustments of the interest rate of the Agency's bonds or notes.
 - d. Other provisions consistent with this Chapter that, for a loan obligation, do not affect the city's or county's ability to pay the principal of and the interest on the loan obligation or materially and adversely affect the financial position of the city or the county and the ability of the city or the county to enter into the loan obligation at a reasonable interest cost to the city or the county and, for a bond or note, do not materially and adversely affect the financial position of the Agency and the marketing of the bonds or notes at a reasonable interest cost to the Agency.
- (21) 'Project.'-- A capital project, including equipment, for a water supply system, a wastewater collection system, a wastewater treatment works, or a combination of these.
- (22) 'Revenues.'-- All moneys received by the Agency, other than the proceeds received by the Agency from the sale of bonds or notes, in connection with providing financing to cities and counties, including:
- a. Payments of the principal of, the premium on, if any, and the interest on a loan obligation.
 - b. Administrative charges.
 - c. Investment earnings on all revenues, funds, and other moneys of the Agency.
- (23) 'State.'-- The State of North Carolina.
- (24) 'Wastewater collection system.'-- Defined in G.S. 159G-3.
- (25) 'Wastewater treatment works.'-- Defined in G.S. 159G-3.
- (26) 'Water supply system.'-- Defined in G.S. 159G-3.

"§ 159H-3. Creation and membership of Municipal Agency.

(a) A body politic and corporate is created to be known as the 'North Carolina Municipal Pooled Capital Projects Financing Agency.' It is a public agency and an instrumentality of the State for the performance of essential governmental and public functions.

(b) The Agency is governed by a board of directors that consists of nine members. One of the members of the Board shall be the State Treasurer who shall serve ex officio. The State Treasurer shall be Chair of the Board. Two members shall be appointed by the Governor, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and three members shall be appointed by the General Assembly upon the

1 recommendation of the President Pro Tempore of the Senate in accordance
2 with G.S. 120-121. The appointments made by the Governor and the
3 recommendations made by the Speaker and the President Pro Tempore shall
4 be made from a list of at least three nominees who may or may not be
5 municipal officials for each position submitted by the League of Municipalities.
6 The term of the initial appointments by the Governor shall begin on the
7 date of appointment; one appointment shall expire on June 30, 1991, and one
8 shall expire on June 30, 1992, as designated by the Governor. The term of the
9 initial appointments by the General Assembly shall begin on the date of
10 appointment; one of the three appointments recommended by the Speaker and
11 one of the three recommended by the President Pro Tempore shall expire on
12 June 30, 1991, one shall expire on June 30, 1992, and one shall expire on June
13 30, 1993, as designated by the General Assembly. Appointments made to
14 succeed the initial appointments shall be for two-year terms beginning on July
15 1.

16 (c) All members of the Board shall remain in office until their successors
17 are appointed and qualify. A vacancy in an appointment made by the
18 Governor shall be filled by the Governor for the remainder of the unexpired
19 term. A vacancy in an appointment made by the General Assembly shall be
20 filled in accordance with G.S. 120-122. A person appointed to fill a vacancy
21 must qualify in the same manner as a person appointed for a full term.

22 (d) A member of the Board may be removed from office for misfeasance,
23 malfeasance, nonfeasance, or improper influence under G.S. 143B-13(c).

24 (e) The Board may adopt bylaws governing the call of meetings, quorums,
25 voting procedures, the keeping of records, and other organizational and
26 administrative matters. A quorum may not be less than five members.

27 (f) A vacancy in the membership of the Board does not affect the right of a
28 quorum to exercise all rights and to perform all duties of the Board and the
29 Agency.

30 (g) No part of the revenues or assets of the Agency may inure to the benefit
31 of or be distributable to its members or officers or other private persons,
32 except for per diem and allowances. The members of the Board shall receive
33 no salary for their services but may receive per diem and allowances in
34 accordance with G.S. 138-5.

35 (h) The Agency shall be contained within the Department of State
36 Treasurer as if it had been transferred to that Department by a Type II transfer
37 as defined in G.S. 143A-6(b).

38 **"§ 159H-4. Creation and membership of County Agency.**

39 (a) A body politic and corporate is created to be known as the 'North
40 Carolina County Pooled Capital Projects Financing Agency.' It is a public
41 agency and an instrumentality of the State for the performance of essential
42 governmental and public functions.

43 (b) The Agency is governed by a board of directors that consists of nine
44 members. One of the members of the Board shall be the State Treasurer who

1 shall serve ex officio. The State Treasurer shall be Chair of the Board. Two
2 members shall be appointed by the Governor, three members shall be
3 appointed by the General Assembly upon the recommendation of the Speaker
4 of the House of Representatives in accordance with G.S. 120-121, and three
5 members shall be appointed by the General Assembly upon the
6 recommendation of the President Pro Tempore of the Senate in accordance
7 with G.S. 120-121. The appointments made by the Governor and the
8 recommendations made by the Speaker and the President Pro Tempore shall
9 be made from a list of at least three nominees who may or may not be county
10 officials for each position submitted by the Association of County
11 Commissioners.

12 The term of the initial appointments by the Governor shall begin on the date
13 of appointment; one appointment shall expire on June 30, 1991, and one shall
14 expire on June 30, 1992, as designated by the Governor. The term of the
15 initial appointments by the General Assembly shall begin on the date of
16 appointment; one of the three appointments recommended by the Speaker and
17 one of the three recommended by the President Pro Tempore shall expire on
18 June 30, 1991, one shall expire on June 30, 1992, and one shall expire on June
19 30, 1993, as designated by the General Assembly. Appointments made to
20 succeed the initial appointments shall be for two-year terms beginning on July
21 1.

22 (c) All members of the Board shall remain in office until their successors
23 are appointed and qualify. A vacancy in an appointment made by the
24 Governor shall be filled by the Governor for the remainder of the unexpired
25 term. A vacancy in an appointment made by the General Assembly shall be
26 filled in accordance with G.S. 120-122. A person appointed to fill a vacancy
27 must qualify in the same manner as a person appointed for a full term.

28 (d) A member of the Board may be removed from office for misfeasance,
29 malfeasance, nonfeasance, or improper influence under G.S. 143B-13(c).

30 (e) The Board may adopt bylaws governing the call of meetings, quorums,
31 voting procedures, the keeping of records, and other organizational and
32 administrative matters. A quorum may not be less than five members.

33 (f) A vacancy in the membership of the Board does not affect the right of a
34 quorum to exercise all rights and to perform all duties of the Board and the
35 Agency.

36 (g) No part of the revenues or assets of the Agency may inure to the benefit
37 of or be distributable to its members or officers or other private persons,
38 except for per diem and allowances. The members of the Board shall receive
39 no salary for their services but may receive per diem and allowances in
40 accordance with G.S. 138-5.

41 (h) The Agency shall be contained within the Department of State
42 Treasurer as if it had been transferred to that Department by a Type II transfer
43 as defined in G.S. 143A-6(b).

44 **"§ 159H-5. General powers of Agency.**

1 An Agency may:

- 2 (1) Make and execute contracts and agreements necessary or
3 incidental to the exercise of its powers and duties under this
4 Chapter, including agreements in respect of loan obligations,
5 agreements with issuers of credit facilities, liquidity facilities,
6 bond insurance policies, and reserve fund insurance policies,
7 investment contracts, and interest-rate agreements.
- 8 (2) Contract with a city or county with respect to any of the
9 matters covered by this Chapter.
- 10 (3) Establish a debt service reserve fund and other reserve funds
11 and borrow money and purchase insurance and investment
12 contracts to establish, maintain, or increase the funds.
- 13 (4) Agree to apply and assign any money, loan obligations, and
14 other revenues.
- 15 (5) Borrow money to carry out and effect its corporate purposes
16 and issue in evidence thereof bonds, notes, or bond
17 anticipation notes for the purpose of providing funds
18 therefor, including funds for the financing and refinancing of
19 the cost of projects and the payment or advance on behalf of
20 a city or a county of the cost of the project.
- 21 (6) Apply any payments or prepayments of the principal of or
22 interest on a loan obligation, to the extent the payment or
23 prepayment is not necessary to pay debt service on the
24 Agency's bonds or notes, to the financing of the cost of
25 projects for cities and counties to the same extent as
26 provided in G.S. 159H-6.
- 27 (7) Fix, revise, charge, apportion, and collect or cause to be
28 fixed, revised, charged, apportioned, and collected
29 administrative charges among cities and counties
30 participating in a program of the Agency.
- 31 (8) Employ an administrator to administer the operations of the
32 Agency, which in the case of the Municipal Agency may be
33 the League of Municipalities and in the case of the County
34 Agency may be the Association of County Commissioners,
35 insurance consultants, fiscal and financial consultants,
36 underwriters, attorneys, trustees, remarketing agents, and
37 other consultants, agents, and employees as may be required
38 in the judgment of the Agency and may fix and pay their
39 compensation from funds available to the Agency for that
40 purpose.
- 41 (9) Conduct or cause to be conducted studies and surveys about
42 the water and wastewater capital needs of cities and
43 counties.

- 1 (10) Apply for, accept, receive, agree to, and comply with the
2 terms and conditions governing grants, loans, advances,
3 contributions, gifts, and other aid from any source
4 whatsoever, including federal and State sources.
- 5 (11) Sue and be sued in its own name and plead and be
6 impleaded.
- 7 (12) Adopt an official seal and alter the seal at its pleasure.
- 8 (13) Establish and revise from time to time minimum standards
9 and criteria for determining the eligibility of cities and
10 counties to obtain financing and make loans as provided in
11 this Chapter.
- 12 (14) Deposit, disburse, and invest, pursuant to the provisions of
13 this Chapter, the proceeds of any fund established in
14 accordance with this Chapter and determine the application
15 of the proceeds of any earnings on the fund.
- 16 (15) Do all other things necessary or convenient to carry out the
17 purposes of this Chapter.

18 **§ 159H-6. Power of Agency to enter into loan obligation.**

19 (a) An Agency may enter into one or more loan obligations with a city or a
20 county and may acquire a loan obligation from a city or county to finance or
21 refinance the cost of the acquisition of a project.

22 (b) A loan obligation entered into by an Agency with a city or a county
23 shall be in writing and shall set forth the terms and conditions agreed to
24 between the Agency and the city or the county for the Agency's loan to the
25 city or county, including:

- 26 (1) The payment provisions and prepayment provisions, if any,
27 required to:
- 28 a. Enable the Agency to administer its programs.
- 29 b. Pay when due the principal of, the premium on, if
30 any, and the interest on bonds, notes, or other
31 obligations of the Agency incurred to make the loan
32 or acquire the loan obligation.
- 33 c. Pay or reimburse the Agency for the city's or county's
34 administrative charges and the cost of establishing
35 and maintaining any reserves.
- 36 (2) The security for payment by the city or county of the loan
37 obligation.
- 38 (3) Other provisions and covenants the Board requires.

39 (c) This Chapter does not affect the application of the provisions on
40 competitive bidding for public contracts in Article 8 of Chapter 143 of the
41 General Statutes or the application of Article 3 of Chapter 143 of the General
42 Statutes.

43 **§ 159H-7. Eligibility for obtaining financing.**

- 1 (a) In determining the eligibility of a city or county for financing or
2 refinancing a project with a loan from the Agency, the Agency may consider:
3 (1) The type and useful life of and the need for the project.
4 (2) The amount of financing or the cost of the project sought.
5 (3) The credit rating, if any, of the city or county.
6 (4) The future financing and capital needs of the city or county.
7 (5) The availability and cost to the city or county of other
8 methods of financing.
9 (6) The construction, disbursement, and management
10 procedures in effect in the city or county.
11 (7) Other factors the Agency considers relevant in deciding
12 whether to provide the financing.
13 (b) As a condition of determining eligibility for participation in one or
14 more financing programs of the Agency, the Agency may establish:
15 (1) Construction, disbursement, and accounting procedures and
16 require a city or county to comply with the procedures.
17 (2) Minimum credit ratings or criteria.
18 (3) The minimum and maximum amount of the cost of a project
19 to be financed by the Agency.
20 (4) The maximum term of a loan obligation, not to exceed 30
21 years for any loan obligation and not to exceed 20 years
22 unless the Agency finds that a term longer than 20 years but
23 no more than 30 years is necessary.
24 (5) Procedures the Agency may use when a city or county
25 defaults on its obligations under a loan obligation.
26 (6) Other procedures, conditions, and requirements the Agency
27 finds necessary or desirable in establishing its programs.
28 (c) Except to the extent that a city's or county's power is restricted by the
29 terms of a loan obligation or other agreement between the city or county and
30 the Agency, this Chapter does not affect the ability of a city or a county to
31 obtain financing or refinancing or to acquire projects from a source other than
32 the Agency, to establish or continue its own financing or acquisition program,
33 or to enter into any other financing program.
34 **§ 159H-8. Power of cities and counties to enter into loan obligations.**
35 (a) A city or county determined by the Agency to be eligible for a loan
36 from the Agency may borrow money from the Agency for the purpose of
37 financing or refinancing the cost of acquisition by the city or county of a
38 project. To borrow money from the Agency, the city or county shall enter into
39 a loan obligation with the Agency that is approved by the city council or the
40 county board of commissioners. Before a city or county enters into a loan
41 obligation with the Agency, the city or county must hold a public hearing on
42 the proposed obligation. Notice of the public hearing must be published at
43 least 10 days before the date set for the hearing. A loan obligation is binding
44 from the date a city or county enters into the obligation.

1 (b) The obligation of a city or a county under a loan obligation shall be
2 payable and otherwise secured as provided in G.S. 159H-9.

3 (c) In connection with entering into a loan obligation, a city or a county
4 may enter into a credit facility. The obligation of a city or a county under a
5 credit facility to repay any drawing under the facility may be made payable
6 and otherwise secured, to the extent applicable, as provided in G.S. 159H-9.

7 (d) The Agency or a city or a county may propose an amendment to a loan
8 obligation, including an amendment restructuring or otherwise relating to the
9 principal repayment schedule and the interest payment schedule set forth in
10 the loan obligation. A proposed amendment must be:

11 (1) Consistent with the then existing financial condition of the
12 city or the county and its ability to meet its obligations
13 under the loan obligation.

14 (2) Consistent with the then existing financial condition of the
15 Agency and the administration of the Agency's duties and
16 responsibilities.

17 (e) A loan obligation and an amendment to a loan obligation must be
18 submitted to the Local Government Commission for approval; a loan
19 obligation or an amendment to a loan obligation is not effective unless it is
20 approved by the Local Government Commission. In determining whether to
21 approve a loan obligation or an amendment to a loan obligation, the Local
22 Government Commission may consider the criteria set forth in G.S. 159-52 and
23 159-86. The Local Government Commission shall approve a loan obligation
24 or an amendment to a loan obligation if it finds that the loan obligation or
25 amendment meets those criteria and conforms with the purposes of this
26 Chapter. After considering a loan obligation or an amendment to a loan
27 obligation, the Local Government Commission shall enter an order either
28 approving or disapproving the obligation or amendment. An order of
29 approval is not an approval of the legality of the obligation or amendment. If
30 the Local Government Commission enters an order disapproving the
31 obligation or amendment, the proceedings under this subsection shall be at an
32 end.

33 **"§ 159H-9. Sources and security for payment of loan obligations.**

34 (a) Identification. The city council or the county board of commissioners,
35 as appropriate, shall determine the source of funds for and the security for
36 payment of a loan obligation. The obligation of a city or a county with respect
37 to the sources of funds authorized by subsections (c) and (d) of this section and
38 the interest rate that applies to a loan obligation shall be specifically identified
39 in the proceedings of the city council or the county board of commissioners
40 authorizing the city or county to enter into a loan obligation.

41 (b) Taxing Power. If under Article 4 of G.S. Chapter 159, the Local
42 Government Bond Act, a bond order authorizing the issuance of bonds that
43 pledge the faith and credit of a city or a county for the purpose of providing
44 funds for one or more purposes that constitute a project has taken effect, then,

1 in lieu of issuing any bonds authorized but not sold and delivered pursuant to
2 the order, or any bond anticipation note in anticipation of the bonds, the city
3 council or the county board of commissioners may enter into a loan obligation
4 and may pledge the faith and credit of the city or the county, as appropriate, to
5 secure its obligation to make the payments required under the loan obligation,
6 or a under credit facility in support of the loan obligation, if the following
7 conditions are met:

8 (1) The aggregate principal amount due under the loan
9 obligation does not exceed the aggregate amount of
10 authorized but unissued bonds, or of any bond anticipation
11 notes issued in anticipation of the bonds, under the bond
12 order.

13 (2) The project to be acquired is a purpose for which proceeds
14 of the bonds or bond anticipation notes may be expended
15 under the bond order.

16 (c) Agreement To Apply Funds. A city or county may agree to apply to
17 the payment of a loan obligation any available source of funds of the city or
18 county. To the extent the generation of funds is within the power of the city
19 or county, the city or county may enter into covenants to take action in order
20 to generate the funds. An agreement to apply funds or a covenant to take
21 action to generate funds may not pledge the city's or county's taxing power.

22 (d) Continuing Contract. A city or county may enter into a loan obligation
23 that constitutes a continuing contract and provides for the making of payments
24 in ensuing fiscal years from any available source of funds, including the
25 proceeds of taxes realized from the exercise of the city's or county's power of
26 taxation, appropriated by the city or county in its annual budget, if:

27 (1) The city council or county board of commissioners
28 appropriates sufficient funds to pay any amount to be paid
29 under the loan obligation in the fiscal year in which the
30 contract is entered into and the appropriation is made
31 before the city or county enters into the loan obligation.

32 (2) The taxing power of the city or county is not pledged to
33 secure any payments to be made pursuant to the loan
34 obligation and the Agency has agreed that it has no right to
35 require the exercise of a city's or a county's power of
36 taxation to secure a loan obligation.

37 A loan obligation that constitutes a continuing contract may include a
38 provision automatically cancelling the loan obligation in the event the city
39 council or county board of commissioners decides not to appropriate funds to
40 make payment in an ensuing fiscal year, in which event the obligation of the
41 city or county to make any future payments in any ensuing fiscal year ends.
42 No deficiency judgment requiring the exercise of the city's or county's power
43 of taxation may be entered against the city or county in any action for breach
44 of a contractual obligation authorized by this subsection.

1 (e) Lien. The sources of payment specifically identified by a city or
2 county and then held or received by a city or a county, a fiduciary, or the
3 Agency are immediately subject to the lien of the loan obligation without any
4 physical delivery of the sources or any further action. The lien is valid against
5 all parties having claims of any kind in tort, contract, or otherwise against a
6 city or county without regard to whether the parties had notice of the lien.
7 The proceedings, the loan obligation, or any other document or action by
8 which the lien on a source of payment is created need not be filed or recorded
9 in any manner other than as provided in this Chapter.

10 (f) Security Interest. A loan obligation secured by a source of funds may
11 provide additional security by the granting of a security interest in the project
12 acquired, including land and equipment, or the granting of a security interest
13 in real or personal property owned by the city or county.

14 (g) Interest Rate. The interest payable by a city or a county to the Agency
15 on a loan obligation may be at one or more fixed or variable rates as
16 determined by the Local Government Commission with the approval of the
17 city council or the county board of commissioners. Approval may be given as
18 the city council or the county board of commissioners directs, such as by a
19 certificate signed by a representative of the city or the county designated by the
20 city council or the county board of commissioners.

21 The Agency may determine that it is necessary that certain provisions in the
22 Agency's bonds or notes be reflected, in similar terms, in loan obligations, so
23 that if it is necessary to vary the interest rate or call the principal prior to
24 maturity of certain of the Agency's bonds or notes, the Agency will have the
25 power to effect a similar variation in interest rate or a similar call prior to
26 maturity of certain loan obligations. Accordingly, in fixing the details of a loan
27 obligation, the city council or the county board of commissioners may make a
28 loan obligation:

29 (1) Payable from time to time on demand or tender for
30 purchase by the Agency provided a credit facility supports
31 the loan obligation, unless the city council or the county
32 board of commissioners specifically determines that a credit
33 facility is not required because the absence of a credit
34 facility will not affect the city's or the county's ability to
35 make payment on demand or tender and will not materially
36 and adversely affect the financial position of the city or the
37 county or the ability of the city or county to enter into the
38 loan obligation at a reasonable interest cost to the city or the
39 county.

40 (2) Additionally supported by a credit facility.

41 (3) Subject to redemption or a mandatory tender for purchase
42 by the city or county prior to maturity.

43 (4) Bear interest at a rate or rates that vary, including variations
44 permitted pursuant to a par formula.

1 (h) Substitution and Acceleration. A loan obligation may not include a
2 nonsubstitution clause that restricts the right of a city or county to replace or
3 provide a substitute for a project financed pursuant to the loan obligation. A
4 loan obligation may provide for an acceleration of the repayment schedule
5 under the obligation.

6 (i) Default. If a city or county defaults on a loan obligation, the Agency
7 may apply any reimbursement, distribution, or allotment of State funds to
8 which the city or county is entitled toward payment of the loan obligation.

9 **"§ 159H-10. Credit of State and local governments not pledged.**

10 Bonds or notes issued by an Agency under this Chapter may not be secured
11 by a pledge of the faith and credit of the State or of any political subdivision of
12 the State nor be considered to create an indebtedness of the State or of a
13 political subdivision of the State requiring voter approval. Bonds and notes
14 issued by an agency shall be payable solely from Agency revenues and other
15 funds provided for payment of the bonds and notes. Each bond or note issued
16 under this Chapter by an Agency must state on its face that the Agency is
17 obligated to pay the bond or note or the interest or the premium on the bond
18 or note only from Agency revenues and other funds pledged to pay the bond
19 or note and that neither the faith and credit nor the taxing power of the State
20 or of any political subdivision of the State is pledged as security for the
21 payment of the principal of or the interest or premium on the bond or note.

22 Expenses incurred by the Agency in carrying out the provisions of this
23 Chapter shall be payable from revenues and other funds provided pursuant to,
24 or available for use under, this Chapter. The Agency may not incur a liability
25 beyond the extent to which moneys have been provided to pay for the liability.

26 **"§ 159H-11. Bonds and notes.**

27 (a) The Agency may provide for the issuance, at one time or from time to
28 time, of bonds or notes, including bond anticipation notes and renewal notes,
29 of the Agency to carry out its corporate purposes. The principal of and
30 interest on the bonds or notes shall be payable solely from funds provided
31 under this Chapter for their payment. A bond anticipation note may be made
32 payable from the proceeds of bonds or renewal notes or, in the event bond or
33 renewal note proceeds are not available, from any available Agency revenues
34 or other funds provided for payment of the note. Bonds and notes may also be
35 paid from the proceeds of any credit facility.

36 The bonds and notes of each issue shall be dated and may be made
37 redeemable prior to maturity at the option of the Agency or otherwise, at a
38 price or prices, on a date or dates, and upon the terms and conditions
39 determined by the Agency. The bonds or notes may also be made payable
40 from time to time on demand or tender for purchase by the owner upon terms
41 and conditions determined by the Agency.

42 Bonds or notes shall bear interest at a rate or rates, including variable rates,
43 as determined by the Local Government Commission with the approval of the
44 Agency.

1 (b) In fixing the details of bonds or notes, the Agency may provide that the
2 bonds or notes may:

- 3 (1) Be payable from time to time on demand or tender for
4 purchase by the owner of the bond or note provided a credit
5 facility supports the bond or note, unless the Local
6 Government Commission specifically determines that a
7 credit facility is not required because the absence of a credit
8 facility will not materially and adversely affect the financial
9 position of the Agency and the marketing of the bonds or
10 notes at a reasonable interest cost to the Agency.
11 (2) Be additionally supported by a credit facility.
12 (3) Be subject to redemption or a mandatory tender for
13 purchase prior to maturity.
14 (4) Bear interest at a rate or rates that vary, including variations
15 permitted pursuant to a par formula.
16 (5) Be made the subject of a remarketing agreement whereby an
17 attempt is made to remarket the bonds or notes to new
18 purchasers prior to their presentment for payment to the
19 provider of the credit facility or to the State.

20 (c) Notes shall mature at a time or times determined by the Agency, and
21 bonds shall mature at a time or times determined by the Agency, not to exceed
22 40 years. The Agency shall determine the form and manner of execution of
23 bonds or notes, including any interest coupons to be attached the bonds or
24 notes, and shall fix the denomination or denominations and the place or places
25 of payment of principal and interest. Payment may be made at any bank or
26 trust company inside or outside the United States.

27 In case an officer whose signature or a facsimile of whose signature appears
28 on a bond, note, or coupon ceases to be the officer before the bond, note, or
29 coupon is delivered, the signature or facsimile is nevertheless valid and has the
30 same effect as if the officer had remained in office until the delivery. A bond,
31 note, or coupon may bear the signature or facsimile signature of a person who
32 will be the proper officer to sign the bond, note, or coupon when it is executed
33 but is not the officer on the date of the bond, note, or coupon.

34 The Agency may provide for the authentication of bonds or notes by a
35 trustee or other authenticating agent. Bonds or notes may be issued as
36 certificated or uncertificated obligations, or both, and in coupon or in
37 registered form, or both, as the Agency determines. The Agency may provide
38 for the registration of any coupon bonds or notes as to principal alone and also
39 as to both principal and interest, for the reconversion into coupon bonds or
40 notes of any bonds or notes registered as to both principal and interest, for the
41 interchange of registered and coupon bonds or notes, and for a system for
42 registration determined by the Agency.

43 (d) An Agency may not issue bonds or notes under this Chapter unless the
44 Local Government Commission approves the issuance of the bonds or notes

1 and, with the approval of the Agency, sells the bonds or notes. The Agency
2 shall file with the Secretary of the Local Government Commission an
3 application requesting approval of the issuance of bonds or notes. An
4 application must contain the information and include the documents
5 concerning the proposed financing that the Secretary of the Local Government
6 Commission requires.

7 In determining whether to approve a proposed bond or note issue, the Local
8 Government Commission may consider the criteria set forth in G.S. 159-52 and
9 G.S. 159-86 and the effect of the proposed financing upon any scheduled or
10 proposed sale of obligations by the State, a State agency or department, or a
11 unit of local government in the State. The Local Government Commission
12 shall approve the issuance of bonds or notes if it finds that the proposed
13 financing satisfies those criteria and conforms with the purposes of this
14 Chapter.

15 The Local Government Commission may sell bonds or notes approved by it
16 when the Agency makes a written request to the Local Government
17 Commission to sell the bonds or notes and the Agency approves the sale. The
18 Local Government Commission may sell bonds or notes in the manner, either
19 at public or private sale, and for the price or prices it finds to be in the best
20 interest of the Agency and to conform with the purposes of this Chapter.

21 (e) The proceeds of bonds or notes may be used only for the purposes for
22 which the bonds or notes were issued and shall be disbursed in the manner
23 and under the restrictions, if any, set by the Agency in the resolution
24 authorizing the issuance of the bonds or notes or in a trust agreement securing
25 the bonds or notes.

26 (f) Before preparing definitive bonds, the Agency may issue interim receipts
27 or temporary bonds, with or without coupons, exchangeable for definitive
28 bonds when the bonds have been executed and are available for delivery. The
29 Agency may provide for the replacement of bonds or notes that become torn,
30 destroyed, or lost.

31 (g) Approval by an entity is not required for the issuance of bonds or notes
32 under this Chapter unless this Chapter sets out the requirement. No action not
33 required by this Chapter, a resolution authorizing the issuance of bonds or
34 notes under this Chapter, or a trust agreement securing bonds or notes issued
35 under this Chapter is necessary to issue bonds or notes under this Chapter.

36 **"§ 159H-12. Trust agreement or resolution securing Agency bonds or notes.**

37 (a) The Agency may secure bonds and notes issued under this Chapter by a
38 trust agreement by and between the Agency and a corporate trustee or by a
39 resolution providing for the appointment of a corporate trustee. A corporate
40 trustee may be located inside or outside the State and may be a trust company
41 or a bank that has the powers of a trust company. A bank or trust company
42 may act as depository of the proceeds of bonds, notes, revenues, assets, or other
43 money of the Agency and to furnish indemnifying bonds or pledge securities as
44 required by the Agency.

1 A trust agreement or resolution may set out the rights and remedies of the
2 owners of bonds or notes and of any trustee and may restrict the individual
3 rights of action by an owner. A trust agreement or resolution may contain
4 other provisions the Agency considers reasonable and proper for the security
5 of the owners of the bonds or notes.

6 A trust agreement or resolution may pledge or assign all or part of the
7 revenues or assets of the Agency, including loan obligations, agreements or
8 commitments to enter into loan obligations, contracts, agreements, and other
9 security or investment obligations, fees or charges made or received by the
10 Agency, moneys received in payment of loans and interest thereon, and other
11 moneys received or to be received by the Agency. Expenses incurred in
12 carrying out the provisions of a trust agreement or resolution may be treated as
13 a part of the cost of any project or as an administrative charge and may be
14 paid from the revenues or assets pledged or assigned to the payment of the
15 principal of and the interest on bonds and notes or from any other funds
16 available to the Agency.

17 (b) Except as provided in this subsection, all bonds and notes issued under
18 this Chapter shall be equally and ratably secured by a pledge, charge, and lien
19 upon the revenues or assets provided in the trust agreement or resolution,
20 without priority by reason of number or dates of bonds or notes, execution, or
21 delivery, in accordance with this Chapter and the trust agreement or
22 resolution. The Agency may provide in the trust agreement or resolution that
23 bonds or notes issued pursuant to the trust agreement or resolution shall be
24 subordinated and junior in standing, with respect to the payment of principal
25 and interest on the bonds or notes and the security for the bonds or notes, to
26 any other bonds or notes.

27 (c) The Agency may set the terms and conditions of loan obligations,
28 including the repayment terms, so as to provide a fund that when combined
29 with other available funds, such as investment income and the proceeds of
30 administrative charges, is sufficient to:

- 31 (1) Pay the operating costs of the Agency.
- 32 (2) Pay the principal of and the interest on all bonds and notes
33 as they become due and payable.
- 34 (3) Create and maintain any reserves required by the trust
35 agreement or resolution securing the bonds or notes.

36 (d) A pledge of any assets or revenues of the Agency is valid from the time
37 the pledge is made. Assets or revenues pledged and thereafter received by the
38 Agency are immediately subject to the lien of the pledge without any physical
39 delivery or further action. The lien of a pledge is valid against all parties
40 having claims of any kind in tort, contract, or otherwise against the Agency,
41 regardless whether the parties had notice of the lien. The trust agreement or
42 resolution by which a pledge is created or a loan obligation need not be filed
43 or recorded except in the records of the Agency.

1 As long as any bonds or notes issued by the Agency are outstanding and
2 unpaid, the State may not limit or alter the right to set the terms and
3 conditions of loan obligations so as to provide sufficient funds for the items
4 listed in subsection (c) and to to fulfill the terms of any agreements made with
5 the bondholders or noteholders that were vested in the Agency at the time the
6 bonds or notes were issued. The State may not impair the rights and remedies
7 of the bondholders or noteholders until the bonds or notes and all costs and
8 expenses in connection with any action or proceedings by or on behalf of the
9 bondholders or noteholders are fully paid, met, and discharged.

10 **"§ 159H-13. Moneys received by Agency to be held in trust.**

11 Notwithstanding any other provisions of law, all moneys, except
12 administrative charges, received by an Agency, including payments made
13 under a loan obligation, proceeds received from the sale or other disposition of
14 a loan obligation, and proceeds received from the disposition a project, are
15 trust funds to be held and applied solely as provided in this Chapter. The
16 resolution authorizing the issuance of, or a trust agreement securing, bonds or
17 notes may provide that moneys received by the Agency may be invested
18 pending disbursement and that an officer with whom, or any bank or trust
19 company with which, the moneys are deposited shall act as trustee of the
20 moneys and hold and apply the moneys for the purposes of this Chapter,
21 subject to the regulations as that this Chapter or the resolution or trust
22 agreement provide. The moneys may be deposited and invested as provided in
23 G.S. 159-30 and any deposit or investment authorized by that statute may be
24 deposited or invested with any bank located inside or outside the State or the
25 United States whose unsecured obligations are rated in either of the two
26 highest rating categories by either Moody's Investors Service or Standard &
27 Poor's Corporation.

28 **"§ 159H-14. Remedies.**

29 An owner of bonds, notes, or coupons issued under this Chapter and the
30 trustee under a trust agreement securing or resolution authorizing the issuance
31 of the bonds or notes may, to the extent permitted by the trust agreement or
32 resolution, may protect and enforce any and all rights under the laws of the
33 State or under the trust agreement or resolution, or under any other contract
34 executed by the Agency pursuant to this Chapter and may enforce and compel
35 the performance of all duties required by this Chapter or by the trust
36 agreement or resolution by the Agency or by any officer of the Agency.

37 **"§ 159H-15. Status of bonds and notes under Uniform Commercial Code.**

38 Bonds, notes, and interest coupons issued under this Chapter are investment
39 securities under Article 8 of G.S. Chapter 25, the Uniform Commercial Code.

40 **"§ 159H-16. Bonds and notes eligible for investment.**

41 Bonds and notes issued under this Chapter are securities in which the State,
42 the political subdivisions of the State, insurance companies, trust companies,
43 investment companies, banks, savings banks, savings and loan associations,
44 credit unions, pension or retirement funds, other financial institutions engaged

1 in business in the State, executors, administrators, trustees, and other
2 fiduciaries may properly and legally invest funds, including capital in their
3 control or belonging to them. Bonds or notes issued under this Chapter are
4 securities that may properly and legally be deposited with and received by any
5 officer or agency of the State or political subdivision of the State for any
6 purpose for which the deposit of bonds, notes, or obligations of the State or
7 any political subdivision is authorized by law.

8 **"§ 159H-17. Refunding bonds and notes.**

9 (a) The Agency may issue bonds and notes for the purposes of refunding
10 any bonds or notes issued pursuant to this Chapter, including the payment of
11 any redemption premium on the bonds or notes and any interest accrued or to
12 accrue to the date of redemption or maturity of the bonds or notes and, if
13 considered advisable by the Agency, for any additional corporate purposes of
14 the Agency.

15 Refunding bonds or notes may bear interest at rates, including variable rates
16 as authorized in G.S. 159H-11, lower, the same as, or higher than and have
17 maturities shorter than, the same as, or longer than the bonds or notes being
18 refunded. The proceeds of refunding bonds or notes may be applied:

19 (1) To the payment and retirement of the bonds or notes being
20 refunded by direct application to their payment and
21 retirement.

22 (2) To the payment and retirement of the bonds or notes being
23 refunded by the deposit in trust of the proceeds.

24 (3) To the payment of any expenses incurred in connection the
25 refunding.

26 (4) For any other uses not inconsistent with the refunding.

27 (b) Any money so held in trust may be invested in:

28 (1) Direct obligations of the United States.

29 (2) Obligations the principal of and the interest on which are
30 guaranteed by the United States.

31 (3) Evidences of ownership of a proportionate interest in
32 specified obligations described in (b)(1) and (b)(2) that are
33 held in the capacity of custodian by a bank or trust company
34 organized and existing under the laws of the United States.

35 (4) Obligations of the State or political subdivisions of the
36 State, local governments thereof, provision for the payment
37 of the principal of and interest on which obligations shall
38 have been made by deposit with a trustee or escrow agent of
39 obligations described in subdivisions (1), (2), or (3) above,
40 the maturing principal of and interest on which, when due
41 and payable, shall provide sufficient money with any other
42 money held in trust for such purpose to pay the principal of,
43 premium, if any, and interest on such obligations of the
44 State or local governments thereof, and which are rated in

- 1 the highest category by Standard & Poor's Corporation and
2 Moody's Investors Service,
3 (5) Obligations of the State or local governments thereof, the
4 principal of and interest on which, when due and payable,
5 have been insured by a bond insurance company which is
6 rated in the highest category by Standard & Poor's
7 Corporation and Moody's Investors Service,
8 (6) Full faith and credit obligations of the State or local
9 governments thereof which are rated in the highest category
10 by Standard & Poor's Corporation and Moody's Investors
11 Service, and
12 (7) Any obligations or investments in which the State Treasurer
13 is authorized, at the time of such investment, to invest funds
14 of the State.

15 The proceedings providing for the issuance of any such refunding bonds or
16 notes may limit the investments in which the proceeds of a particular
17 refunding issue may be invested.

18 Nothing in this section shall be construed as a limitation (i) on the duration
19 of any deposit in trust for the retirement of bonds or notes being refunded but
20 which shall not have matured and which shall not be then redeemable or, if
21 then redeemable, shall not have been called for redemption or (ii) on the
22 power to issue bonds or notes for the combined purpose of refunding bonds or
23 notes and providing moneys for any corporate purpose as provided in this
24 Chapter.

25 "**§ 159H-18. Annual audit.**

26 The Agency shall cause an audit of its books and accounts relating to its
27 activities under this Chapter to be made at least once in each year by an
28 independent certified public accountant or by the State Auditor. The cost of
29 the audit may be paid from any available administrative charges or other
30 available moneys of the Agency.

31 "**§ 159H-19. Officers not liable.**

32 No member or officer of the Agency may be subject to any personal liability
33 or accountability by reason of his execution of any bonds or notes or the
34 issuance of bonds or notes.

35 "**§ 159H-20. Tax exemption.**

36 All of the bonds and notes authorized by this Chapter, any coupons related
37 to the bonds and notes, and the transfer of the bonds, notes, and coupons,
38 including any profit made on the transfer, are exempt from all State, county,
39 and municipal taxation or assessment, direct or indirect, general or special,
40 whether imposed for the purpose of general revenue or otherwise, excluding
41 inheritance and gift taxes, and the interest on the bonds and notes shall not be
42 subject to taxation as to income, nor shall the bonds, notes, and coupons be
43 subject to taxation when constituting a part of the surplus of any bank, trust
44 company, or other corporation.

1 **"§ 159H-21. Conflict of interest.**

2 If any member, officer or employee of the Agency shall be interested either
3 directly or indirectly, or shall be an officer or employee of or have an
4 ownership interest in any firm or corporation, not including cities or counties
5 interested directly or indirectly, in any contract with the Agency, such interest
6 shall be disclosed to the Agency and shall be set forth in the minutes of the
7 Agency, and the member, officer or employee having such interest therein
8 shall not participate on behalf of the Agency in the authorization of any such
9 contract. Other provisions of law notwithstanding, failure to take any or all
10 actions necessary to carry out the purposes of this section shall not affect the
11 validity of any bonds, notes or loan obligations issued pursuant to the
12 provisions of this Chapter.

13 **"§ 159H-22. Alternative method.**

14 The foregoing sections of this Chapter shall be deemed to provide an
15 additional and alternative method for the doing of the things authorized
16 thereby and shall be regarded as supplemental and additional to powers
17 conferred by other laws, and shall not be regarded as in derogation of any
18 powers now existing.

19 **"§ 159H-23. Liberal construction.**

20 This Chapter, being necessary for the health and welfare of the people of
21 the State, shall be liberally construed to effect its purposes.

22 **"§ 159H-24. Inconsistent laws inapplicable.**

23 To the extent this Chapter is inconsistent with part or all of any general or
24 special laws, this Chapter controls."

25 Sec. 2. G.S. 159-148(b) reads as rewritten:

26 "(b) This Article shall not apply to:

- 27 (1) Contracts between a unit of local government and the State
28 of North Carolina or the United States of America (or any
29 agency of either) entered into as a condition to the making
30 of grants or loans to the unit of local government.
31 (2) Contracts for the purchase, lease, or lease with option to
32 purchase of motor vehicles or voting machines.
33 (3) Loan agreements entered into by a unit of local government
34 pursuant to the North Carolina Solid Waste Management
35 Loan Program, Chapter 159I of the General Statutes.
36 (4) Loan obligations entered into by a city or a county pursuant
37 to the North Carolina Municipal and County Pooled Capital
38 Projects Financing Act, Chapter 159H of the General
39 Statutes."

40 Sec. 3. G.S. 105-213(a) reads as rewritten:

41 "(a) The Secretary of Revenue shall keep a separate record by counties of the
42 taxes collected under the provisions of this Article and shall, as soon as
43 practicable after the close of each fiscal year, certify to the State Disbursing
44 Officer and to the State Treasurer the amount of such taxes to be distributed

1 to each county and municipality in the State. The State Disbursing Officer
2 shall thereupon issue a warrant on the State Treasurer to each county and
3 municipality in the amount so certified.

4 In determining the amount to be distributed, the Secretary shall deduct from
5 the net amount of taxes collected under this Article, which is the total amount
6 collected less refunds, the cost to the State for the preceding fiscal year to:

- 7 (1) Collect and administer the taxes levied under this Article;
- 8 (2) Perform the duties imposed upon the Department of
9 Revenue by Article 15 of this Chapter;
- 10 (3) Operate the Property Tax Commission; and
- 11 (4) Operate a training program in property tax appraisal and
12 assessment administration by the Institute of Government.

13 The Secretary shall allocate the net amount of taxes collected under this
14 Article, less the deductions enumerated above, to the counties according to the
15 county in which the taxes were collected. The Secretary shall then increase the
16 amount allocable to each county by a sum equal to forty percent (40%) of the
17 amount of tax on accounts receivable allocated to the county on the basis of
18 collections. The amounts so allocated to each county shall in turn be divided
19 between the county and all municipalities therein in proportion to the total
20 amount of ad valorem taxes levied by each during the fiscal year preceding
21 such distribution. For the purpose of computing the distribution of the
22 intangibles tax to any county and the municipalities located therein for any
23 year with respect to which the property valuation of a public service company
24 is the subject of an appeal pursuant to the provisions of the Machinery Act, or
25 to applicable provisions of federal law, and the Department of Revenue is
26 restrained by operation of law or by a court of competent jurisdiction from
27 certifying such valuation to the county and municipalities therein, the
28 Department shall use the last property valuation of such public service
29 company which has been so certified in order to determine the ad valorem tax
30 levies applicable to such public service company in the county and the
31 municipalities therein.

32 It shall be the duty of the chairman of the board of county commissioners
33 of each county and the mayor of each municipality therein to report to the
34 Secretary of Revenue such information as he may request for his guidance in
35 making said allotments. In the event any county or municipality fails to make
36 such report within the time prescribed, the Secretary of Revenue may
37 disregard such defaulting unit in making said allotments. The amounts so
38 allocated to each county and municipality shall be distributed and used by said
39 county or municipality in proportion to other property tax levies made for the
40 various funds and activities of the taxing unit receiving said allotment;
41 provided, however, that a county or municipality may, without regard to any
42 requirement as to proportionality, use amounts so allocated and amounts
43 allocated under G.S. 105-213.1 and distributed to the county or municipality to
44 secure its obligation under a loan agreement entered ~~into~~ into, or a special

1 obligation bond or note issued, pursuant to the North Carolina Solid Waste
2 Management Loan Program, Chapter 159I of the General Statutes. Statutes or
3 to secure its obligation under a loan obligation entered into pursuant to the
4 North Carolina Municipal and County Pooled Capital Projects Financing Act,
5 Chapter 159H of the General Statutes."

6 Sec. 4. G.S. 150B-1(d)(1) reads as rewritten:

7 "(d)(1) The following are specifically exempted from the
8 provisions of this Chapter:

- 9 a. The Administrative Rules Review Commission;
- 10 b. The Employment Security Commission;
- 11 c. The Industrial Commission;
- 12 d. The Occupational Safety and Health Review Board in
13 all actions that do not involve agricultural employers;
14 ~~and~~
- 15 e. ~~The Utilities Commission. Commission; and~~
- 16 f. The North Carolina Municipal Pooled Capital
17 Projects Financing Agency and the North Carolina
18 County Pooled Capital Projects Financing Agency."

19 Sec. 5. G.S. 120-123 is amended by adding two new subdivisions
20 to read:

21 "(58) The North Carolina Municipal Pooled Capital Projects
22 Financing Agency, as established by G.S. 159H-3.

23 (59) The North Carolina County Pooled Capital Projects
24 Financing Agency, as established by G.S. 159H-4."

25 Sec. 6. The provisions of this act are severable. If a provision of
26 this act or the application of a provision of this act is held invalid, the
27 invalidity does not affect other provisions that can be given effect without the
28 invalid provision or application.

29 Sec. 7. This act does not obligate the General Assembly to
30 appropriate funds to implement its provisions.

31 Sec. 8. This act is effective upon ratification.

Explanation of Proposal 3

The proposed Committee Substitute for the Municipal Pooled Financing bill makes the following changes:

1. It limits financing under the bill to water and wastewater projects. Water and wastewater projects are defined to have the same meanings that are used in the Clean Water Revolving Loan and Grant Fund.
2. It changes the maximum allowable term of a loan from 10 years to 30 years and restricts the maximum term to 20 years absent compelling reasons.
3. It adjusts the initial terms of members of the Municipal Agency and the County Agency to reflect the passage of time since the bill was drafted.
4. It deletes the requirement that a loan obligation contain a non-appropriation clause and gives the Agency the discretion to require a non-appropriation clause.
5. It allows a city or county to give a security interest in property that is not acquired or constructed with funds loaned by the Agency.
6. It deletes references to G.S. 147-69.1 made unnecessary by the amendment of G.S. 159-30 in the 1989 Session.
7. It creates an exception to the general requirement that intangible tax revenue be used in proportion to other tax revenue for intangible tax revenue used to secure special obligation bonds issued under the Solid Waste Management Loan Program.
8. It requires a city or county to hold a public hearing before obtaining a loan from the Agency.
9. It makes various stylistic changes to make the bill easier to read and eliminate redundancies.

PROPOSED LEGISLATION C

COUNTY DISTRIBUTION OF NATURAL GAS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

Infrastructure Study Commission Proposal 2: 90-LJ-I2

THIS IS A DRAFT

Short Title: County May Distribute Natural Gas.

(Public)

Sponsors: Infrastructure Study Commission

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT GIVING COUNTIES THE SAME AUTHORITY THAT CITIES
3 HAVE CONCERNING OPERATION OF A GAS PRODUCTION AND
4 DISTRIBUTION SYSTEM.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 153A-274 reads as rewritten:
7 "**§ 153A-274. Public enterprise defined.**
8 As used in this Article, "public enterprise" includes:
9 (1) Water supply and distribution ~~systems,~~ systems.
10 (2) Sewage collection and disposal systems of all types,
11 including septic tank systems or other on-site collection or
12 disposal facilities or ~~systems,~~ systems.
13 (3) Solid waste collection and disposal systems and ~~facilities,~~
14 facilities.
15 (4) ~~Airports,~~ Airports.
16 (5) Off-street parking ~~facilities,~~ facilities.
17 (6) Public transportation ~~systems,~~ systems.
18 (7) Structural and natural stormwater and drainage systems of
19 all types.

1 (8) Gas production, storage, transmission, and distribution
2 systems, including activities related to exploring for natural
3 gas, whether inside or outside the State, and the purchase or
4 lease of natural gas fields, natural gas reserves, and natural
5 gas supplies.

6 Sec. 2. G.S. 153A-275 reads as rewritten:

7 **"§ 153A-275. Authority to operate public enterprises.**

8 A county may acquire, lease as lessor or lessee, construct, establish, enlarge,
9 improve, extend, maintain, own, operate, and contract for the operation of
10 public enterprises in order to furnish services to the county and its citizens. A
11 county may acquire, construct, establish, enlarge, improve, maintain, own, and
12 operate outside its borders any public enterprise.

13 A county may by ordinance or resolution adopt adequate and reasonable
14 rules and regulations to protect and regulate a public enterprise belonging to
15 or operated by it.

16 A county may operate the part of a gas system that involves activities related
17 to exploring for natural gas or the purchase or lease of natural gas fields,
18 natural gas reserves, or natural gas supplies in a partnership or a joint venture
19 with a natural gas utility or a private enterprise."

20 Sec. 3. This act is effective upon ratification.

PROPOSED LEGISLATION D

CLEAN WATER FUND APPROPRIATION

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

Infrastructure Study Commission Proposal 1: 90-LJ-11

THIS IS A DRAFT

Short Title: Clean Water Funds.

(Public)

Sponsors: Infrastructure Study Commission

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS FOR THE CLEAN WATER
3 REVOLVING LOAN AND GRANT FUND.
4 The General Assembly of North Carolina enacts:
5 Section 1. There is appropriated from the General Fund to the
6 Office of State Budget and Management the sum of eight million eight
7 hundred thousand dollars (\$8,800,000) for the 1990-91 fiscal year to be placed
8 in the Clean Water Revolving Loan and Grant Fund and administered in
9 accordance with G.S. Chapter 159G.
10 Sec. 2. This act shall become effective July 1, 1990.

PROPOSED LEGISLATION E

STORMWATER UTILITIES USER FEES



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

Infrastructure Study Commission Proposal 4: 90-LJ-I4

THIS IS A DRAFT

Short Title: Clarify Power To Collect Stormwater Charge.

(Public)

Sponsors: Infrastructure Study Commission.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CLARIFYING THE POWER OF CITIES AND COUNTIES TO
3 COLLECT CHARGES FOR THE USE OF STORMWATER UTILITIES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 16 of G.S. Chapter 160A is amended by adding a
6 new section to read:
7 "**§ 160A-314.1. Authority to fix and enforce rates for stormwater and drainage**
8 **systems.**
9 (a) A city may establish and revise from time to time schedules of rates,
10 fees, charges, and penalties for the acquisition, construction, operation, and
11 maintenance of stormwater and drainage systems to serve real property. The
12 incidence of stormwater run-off from property is considered use by the owner
13 of the property of a stormwater and drainage system. Schedules of rates, fees,
14 charges, and penalties may vary according to whether the property served is
15 residential, commercial, or industrial property, the property's use, the size of
16 the property, the area of impervious surfaces on the property, the quantity and
17 quality of run-off from the property, the characteristics of the watershed into
18 which stormwater from the property drains, and other factors that affect the
19 stormwater and drainage system. Rates, fees, and charges imposed under this
20 section may not exceed the city's cost of providing a stormwater and drainage
21 system.
22 (b) Rates, fees, charges, and penalties for stormwater and drainage systems
23 are joint and several legal obligations of the owner and of the property served
24 and the tenants, if any. The amount imposed may be billed on the property

1 tax bill, on the bill for water, sewer, or other enterprisory services, or
2 separately. If the charges are billed with those for other services by the city, or
3 by the provider of those services under contract, the council may provide by
4 ordinance the order in which partial payments are to be applied among the
5 various services, to the extent allowed by bond covenants.

6 Charges imposed under this section may be collected by the methods
7 allowed for collection of special assessments, other than by installments, and
8 shall bear interest at the same rate as a special assessment under Article 10 of
9 this Chapter. The charges imposed become a lien when the city files a notice
10 of lien in the office of the clerk of superior court. A notice of lien may not be
11 filed until the owner of the property has been given adequate notice and an
12 opportunity to be heard as provided by ordinance. A lien under this section is
13 next in priority after a special assessment lien.

14 (c) G.S. 160A-314 does not apply to stormwater and drainage systems. This
15 section does not repeal any part of a local act that is inconsistent with the
16 section."

17 Sec. 2. Article 15 of G.S. Chapter 153A is amended by adding a
18 new section to read:

19 "§ 153A-277.1. Authority to fix and enforce rates for stormwater and drainage
20 systems.

21 (a) A county may establish and revise from time to time schedules of rates,
22 fees, charges, and penalties for the acquisition, construction, operation, and
23 maintenance of stormwater and drainage systems to serve real property. The
24 incidence of stormwater run-off from property is considered use by the owner
25 of the property of a stormwater and drainage system. Schedules of rates, fees,
26 charges, and penalties may vary according to whether the property served is
27 residential, commercial, or industrial property, the property's use, the size of
28 the property, the area of impervious surfaces on the property, the quantity and
29 quality of run-off from the property, the characteristics of the watershed into
30 which stormwater from the property drains, and other factors that affect the
31 stormwater and drainage system. Rates, fees, and charges imposed under this
32 section may not exceed the county's cost of providing a stormwater and
33 drainage system.

34 (b) Rates, fees, charges, and penalties for stormwater and drainage systems
35 are joint and several legal obligations of the owner of the property served and
36 the tenants, if any. The charges may be billed on the property tax bill, on the
37 bill for water, sewer, or other enterprisory services, or separately. If the
38 charges are billed with those for other services by the county, or by the
39 provider of those services under contract, the board of commissioners may
40 provide by ordinance the order in which partial payments are to be applied
41 among the various services, to the extent allowed by bond covenants.

42 Charges imposed under this section may be collected by the methods
43 allowed for collection of special assessments, other than by installments, and
44 shall bear interest at the same rate as a special assessment under Article 9 of

1 this Chapter. The charges imposed become a lien when the county files a
2 notice of lien in the office of the clerk of superior court. A notice of lien may
3 not be filed until the owner of the property has been given adequate notice
4 and an opportunity to be heard as provided by ordinance. A lien under this
5 section is next in priority after a special assessment lien.

6 (c) G.S. 153A-277 does not apply to stormwater and drainage systems. This
7 section does not repeal any part of a local act that is inconsistent with the
8 section."

9 Sec. 3. This act is effective upon ratification.

ATTACHMENT A

SENATE BILL 231, PART XI

PART XI.-----STATE INFRASTRUCTURE AND LOCAL GOVERNMENT NEEDS
STUDY COMMISSION

Sec. 11.1. The State Infrastructure Needs and Financing Study Commission is created. The Commission shall:

- (1) Undertake a comprehensive review and analysis of the impact upon community service facilities of any new development, construction, or installation that requires any permit, certification, or other governmental or quasi-governmental action allowing real property development and that generates or tends to generate the need for new, expanded, or improved community service facilities. For purposes of this study, the term "community service facilities" means public facilities or improvements provided or established by a local government, including those provided or established by a local government jointly with other units of government or government agencies, whether local, State, or federal. The term includes utility facilities, transportation facilities, parks and recreation facilities, drainage and water quality facilities, streets and sidewalks, open spaces, emergency and public safety facilities, sewer treatment facilities, and waste disposal facilities, but does not include public educational facilities such as schools, technical institutions, community colleges, and similar facilities;
- (2) Undertake a comprehensive review and analysis of the various methods by which local governments both within North Carolina and within other states, as deemed appropriate by the Commission, fund the costs of expanded, new, or improved community service facilities;
- (3) Determine the most equitable and appropriate means for local governments to obtain funds to provide the new, expanded, or improved community service facilities needed because of the real property development described in subdivision (1). The Commission shall, in making this determination, consider and analyze all practical, legal funding means which are, or which constitutionally could be, available to local governments;
- (4) Study State financial support of local government functions, including the following:
 - a. A review of the extent to which the State provides financial support to or for the benefit of local governments;
 - b. A review of the history of State policies that have influenced the State's support of local governments;
 - c. Identification of local functions that should be subsidized by the State and determination of the extent of State support that would be appropriate;
 - d. Recommendation of a viable, reasonable, and balanced State policy on State support of local government functions for the remainder of this century; and
 - e. Recommendations for further consideration by other commissions regarding sources of revenue and methods of generating revenue to meet the State's obligations for State funding or joint State-local funding of local government functions;
- (5) Study the need for additional local government revenue sources to supplement the property tax, local sales and use taxes, and other existing revenue sources;
- (6) Review recent changes in federal and State law that have reduced financial assistance to local governments, created needs for increased expenditures, and restricted the property tax base;

- (7) Undertake a comprehensive review of State and local functional and funding responsibilities for services provided by State and local government units in North Carolina;
- (8) Make a comprehensive review of sources of funding local government units in North Carolina;
- (9) Study the system under which local units are dependent on the State for authorization of changes in local revenue sources;
- (10) Analyze the impact of federal legislation since 1981 and potential federal legislation on the fiscal outlook of the State and local government units;
- (11) Analyze the methods and formulas used in providing State financial assistance to local government units, including reimbursement for local tax changes;
- (12) Analyze the relationship between the State and local budget cycles;
- (13) Review the process by which local fiscal impact information is presented during the State budget process; and
- (14) Discuss the merits of establishing a permanent advisory commission comprised of State and local elected officials and private citizens that would continually review State and local fiscal relationships.

Sec. 11.2. The Commission shall consist of 20 members to be appointed as follows:

- (1) Five members of the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be designated cochair;
- (2) Five public members appointed by the President Pro Tempore of the Senate, one of whom shall be an elected city government official, one of whom shall be from the land use planning department or agency of a city, and two of whom shall be persons who are involved with or have had extensive experience in land development;
- (3) Five members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be designated cochair; and
- (4) Five public members appointed by the Speaker of the House of Representatives, one of whom shall be an elected county government official, one of whom shall be from the land use planning department or agency of a county, and two of whom shall be persons who are involved with or who have had extensive experience in land development.

Sec. 11.3. Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled in the same manner as the original appointments were made.

Sec. 11.4. Upon request of the Commission or its staff, all State departments and agencies and all local government departments and agencies shall furnish to the Commission or its staff any information in their possession or available to them.

Sec. 11.5. The Commission may submit an interim report of its findings and recommendations and the status of its review and analyses to the General Assembly on or before the first day of the 1990 Regular Session of the 1989 General Assembly. The Commission shall submit the final report of its findings and recommendations to the General Assembly on or before January 15, 1991. All reports shall be submitted by filing the report with the Speaker of the House of

Representatives and the President Pro Tempore of the Senate. The Commission shall terminate upon filing its final report.

Sec. 11.6. The Commission shall meet upon the call of the cochairs.

Sec. 11.7. 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 House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Sec. 11.8. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.
- (3) All other Commission members at the rate established in G.S. 138-5.

Sec. 11.9. There is allocated from the funds appropriated to the General Assembly to the State Infrastructure and Local Government Needs Study Commission for its work the sum of \$30,000 for the 1989-90 fiscal year and the sum of \$25,000 for the 1990-91 fiscal year.

ATTACHMENT B

LOCAL GOVERNMENT CAPITAL NEEDS SURVEY FORM



LOCAL GOVERNMENT CAPITAL NEEDS SURVEY

I. DRINKING WATER SUPPLY

- (1) What is the estimated cost for your unit of local government to bring its drinking water supply facilities into compliance with the 1986 amendments to the Safe Drinking Water Act?
- (2) What is the estimated cost of any planned expansion of your unit of local government's drinking water supply treatment facility and distribution system within the next 20 years?
- (3) What is the estimated cost of necessary improvements to your unit of local government's drinking water supply facilities within the next 20 years due to deterioration and other similar factors?

II. JAILS

- (4) During calendar year 1989, how many months was your unit of local government's jail filled over capacity?

CONVENTIONAL JAIL

ANNEX/SATELLITE JAIL

less than 3 months ___

3 - 6 months ___

7 - 9 months ___

10 - 12 months ___

- (5) What is the estimated cost of your unit of local government's need, if any, to construct or renovate its jail, based on the current jail standards? Indicate whether any needed jail construction or renovation includes construction or renovation of a courthouse, law enforcement center, or similar public safety facility that is or will be housed in the same structure as the jail?
- (6) What is the estimated cost of your unit of local government's projected capital needs for jails within the next 20 years?

III. COURTHOUSES

- (7) What is the estimated cost of your unit of local government's immediate capital needs for courthouse facilities, excluding jails?

THIS SURVEY WAS MAILED TO ALL COUNTIES AND MUNICIPALITIES IN FEBRUARY, 1989. RESULTS WILL BE PUBLISHED IN THE FINAL REPORT OF THE STATE INFRASTRUCTURE COMMISSION TO THE 1991 GENERAL ASSEMBLY.



ATTACHMENT C

WATER AND SEWER ENTITIES

GOVERNMENTAL UNITS AUTHORIZED TO PROVIDE WATER OR SEWER SERVICE

1. **City.** G.S. 160A-311 through 160A-323.
Water supply and distribution systems and sewage collection and disposal systems are two of the public enterprises in which cities may engage. A city is not required to provide water or sewer service, however. A city may finance water or sewer services by taxes, general obligation bonds, revenue bonds, fees, and assessments.

2. **County.** 153A-274 through 153A-288.
Water supply and distribution systems and sewage collection and disposal systems are two of the public enterprises in which counties may engage. A county is not required to provide water or sewer service, however. A county may finance water or sewer services by taxes, general obligation bonds, revenue bonds, fees, and assessments.

3. **Sanitary district.** G.S. 130A-47 through 130A-85.
A sanitary district may establish a water supply and distribution system, a sewage collection disposal system, or both. Creation of a sanitary district is initiated by petition of the property owners in the proposed district. If, after a public hearing, the board of county commissioners in which part or all of the proposed district is located decide that creation of the district is appropriate, the Commission for Health Services adopts a resolution creating the district. The district is governed by an elected 3-member or 5-member board. The district can meet its financial needs by levying taxes, issuing general obligation bonds, issuing revenue bonds, and assessing benefitted property. A sanitary district can cross county boundaries.
There are approximately 32 sanitary districts, but not all of these are organized to provide water or sewer service.

4. **Water and Sewer Authority.** G.S. 162A-1 through 162A-19.
A water and sewer authority can provide both water and sewer service. It is created by resolution of two or more political subdivisions after a public hearing. It is governed by an appointed board. It cannot levy taxes or issue general obligation bonds, but it can issue revenue bonds, charge fees, and assess benefitted property. An example is the Orange Water and Sewer Authority.

5. **Metropolitan Water District.** G.S. 162A-31 through 162A-58.
A metropolitan water district is initiated by petition to the board of county commissioners. Any two political subdivisions in a county or a political subdivision and an unincorporated area can petition for the creation of a metropolitan water district. The district is created by resolution of the Commission for Health Services after a public hearing. A district can levy taxes, issue general obligation bonds, issue revenue bonds, and charge fees. It is governed by an appointed board. It can provide both water and sewer service.
There is 1 metropolitan water district in Harnett County.

6. **Metropolitan Sewerage District.** G.S. 162A-64 through 162A-82.
This district is similar to a metropolitan water district, except it is limited to sewer services and can span county lines. Also, it is created by resolution of the Environmental Management Commission rather than the Commission for Health Services.

7. **County service district.** G.S. 153A-300 through 153A-310.
Water supply and distribution systems and sewage disposal systems are two of the purposes for which a county can create a service district. The district is governed by the

board of commissioners of the county and is not a separate unit of government. The county can levy additional taxes in the service district to finance the increased level of service in the district.

8. County Water and Sewer District. G.S. 162A-86 through 162A-92.

A county water and sewer district is created by the board of county commissioners after a public hearing. It is a separate unit of government from the county but is governed by the board of county commissioners. The district can levy taxes, issue general obligation bonds, issue revenue bonds, and make assessments.



ATTACHMENT D

JAIL CONSTRUCTION STANDARDS FOR NEW JAILS

"D"

10 NCAC 3J .3400-.3426 are proposed to be adopted as follows:

SECTION .3400 - STANDARDS FOR
NEW JAIL DESIGN AND CONSTRUCTION

.3401 APPLICABILITY - CONSTRUCTION

(a) North Carolina State Building Code - Jails must meet the requirements of the North Carolina State Building Code in effect at the time of construction, additions, alterations or repairs (as defined by the Code).

(b) New Jails - The construction standards established in Section .3400 shall apply to all jail construction for which the final working drawings have been approved by the Branch after the effective date of this rule.

(c) Existing Jails - Existing jails for which final working drawings have been approved prior to the effective date of these rules shall continue to be governed by the existing construction standards which are now in Section .3700 and the same standards shall apply to new jails which have had final working drawings approved by the Branch prior to the effective date of this rule. Existing jails or new jails which have had final working drawings approved by the Branch prior to the effective date of this rule may use the standards found in Section .3400 in lieu of those in .3700 if they choose.

(d) Additions - The construction standards established in Section .3400 shall apply to any construction that adds square footage to the building and for which the final working drawings are approved after the effective date of this rule.

(e) Alterations or Repairs - When alterations or repairs are made to an existing jail building which effect its structural strength, exits, fire hazards, electrical systems, mechanical systems, or sanitary conditions, such alterations or repairs shall comply with the standards for new construction established in Section .3400. Unaltered portions of the building shall only be required to comply with the new construction standards indicated in Section .3400 under the circumstances specified in (f)-(h) below.

(f) Extensive Annual Alterations or Repairs - If, within any twelve month period, alterations or repairs costing in excess of fifty per cent (50%) of the then physical value of the building are made to an existing jail, such jail shall conform to the construction standards for new jails established in Section .3400.

(g) Reconstruction After Damage - If an existing jail is damaged by fire or otherwise in excess of fifty per cent (50%) of the then physical value of the building at the time of damage, the jail shall be reconstructed in conformance with the construction standards for new jails established in Section .3400.

(h) Physical Value - For the purpose of this rule, the physical value of the jail building shall be determined by the local building inspection department.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3402 CONSULTATION AND TECHNICAL ASSISTANCE

Consultation and technical assistance in planning a new jail shall be available through the Branch.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3403 COMPLIANCE REVIEW AND APPROVAL

(a) The governing body shall submit copies of the following to the Branch before it begins construction of a new jail and before it makes additions or alterations to an existing jail as defined by the North Carolina State Building Code:

- (1) three sets of schematic drawings and outline specifications;
- (2) three sets of preliminary working drawings or design development drawings and outline specifications;
- (3) three sets of completed final working drawings and specifications.

(b) Upon receipt of the drawings and specifications at each stage, the Branch shall send one set each to the following for their review and approval: the Department of Insurance to insure compliance with the North Carolina State Building Code, and the Division of Environmental Health in the Department of Environment, Health and Natural Resources to insure compliance with the rules governing sanitation as codified in 10 N.C.A.C. 10A, Section .0100 and which are hereby adopted by reference pursuant to G.S. 150B-14(c). The Branch shall keep one set for its own review and approval to insure compliance with the minimum standards for the operation and construction of jails as contained in this Subchapter.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3404 SPECIFIC CONSTRUCTION REQUIREMENTS

(a) Jails that restrain inmates under lock and key within a building shall meet the requirements of the North Carolina State Building Code for "Institutional Occupancy - Restrained" and the additional security requirements imposed by Section .3420.

(b) Jails that do not restrain inmates within a building by lock and key shall meet the requirements of the North Carolina State Building Code for "Residential Occupancy".

(c) The construction materials in all jails shall be sufficient to provide the degree of security required for the area in which they are used.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3405 CENTRAL CONTROL STATION

In jails that have a central control station, the station shall:

- (1) be strategically located and equipped to regulate and monitor the movement of inmates and officers;
- (2) have a security vestibule at its entrance;
- (3) have direct two-way voice communication with all confinement units;
- (4) have direct two-way voice communication with all officers as needed to maintain safety and security;
- (5) be equipped with a release mechanism to open all confinement unit doors in an emergency;
- (6) have a toilet and sink.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3406 ELEVATORS

Elevators that open into the jail shall be secure and shall be under the control and observation of officers.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3407 INMATE PROCESSING AREA

Each jail that performs a booking and release function shall have an inmate processing area that includes the following:

- (1) a separate inmate entrance;
- (2) a holding area with seating and access to a commode, lavatory, drinking fountain, and a shower;
- (3) a booking area that includes space for photographing and fingerprinting inmates and a telephone for making local and long-distance calls; and
- (4) a sobriety testing area.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3408 VISITATION AREAS

- (a) Each jail shall provide an area for visitation.
- (b) If provided, noncontact visitation areas shall:
 - (1) provide seating for the inmate and visitors;
 - (2) provide a view panel with minimum dimensions of 1'x 1' between the inmate and visitors;
 - (3) provide a telephone communication system or equivalent audio link between the inmate and visitors;
 - (4) permit visual and audible observation by officers; and
 - (5) prevent the passage of contraband.
- (c) If provided, contact visitation areas shall:
 - (1) provide seating for the inmate and visitors; and
 - (2) permit visual and audible observation by officers.
- (d) Confidential attorney visitation areas shall:
 - (1) permit contact between the inmate and attorney;
 - (2) be separate and distinct from the general visitation area;
 - (3) provide seating and a writing table for the inmate and attorney;
 - (4) permit only visual monitoring by the officers;
 - (5) provide a way for the attorney to contact officers if needed; and
 - (6) provide a minimum of 30 footcandles of artificial light.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3409 MEDICAL AREA

- (a) Each jail shall have a medical area that provides the following:
 - (1) a door that may be locked;
 - (2) locked storage for equipment, supplies, medications and medical records;
 - (3) an examination table and a handicapped-accessible sink, toilet and shower;
 - (4) a work station for the doctor and nurse;
 - (5) a telephone; and

(6) direct voice contact with officers.

(b) If a county or a region has more than one jail, it shall be required to provide only one medical area if that area meets the medical needs of the inmates in all of the jails.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3410 OTHER AREAS

(a) Each jail that does not contract for meals shall have a kitchen. If a county or a regional jail has more than one jail, it shall be required to provide only one kitchen if it meets the needs of the inmates in all of the jails.

(b) Each jail that does not contract for laundry services shall have a laundry. If a county or a regional jail has more than one jail, it shall be required to provide only one laundry if it meets the needs of the inmates in all of the jails.

(c) Each jail shall have an area specifically designated for physical exercise.

(d) Each jail shall provide areas with shelves that meet its storage needs. Each jail shall provide a separate area for the secure storage of inmate personal property.

(e) Each jail shall have a cleaning area that is equipped with a sink and that provides for the storage of cleaning supplies and equipment.

(f) Each jail shall provide lockers for those inmates who are placed on work release.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3411 ADMINISTRATIVE FACILITIES

Each jail shall provide space at some location for the following administrative activities:

- (1) Secretarial support
- (2) Record storage
- (3) Training materials and resources
- (4) Mailboxes and bulletin boards for officers
- (5) In-service training
- (6) Office space for jail supervisors

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3412 FLOORS, CEILINGS, AND WALLS

(a) All floors in confinement units shall be sloped toward drains located outside of the cell areas, and the drains shall be tamper-resistant if necessary for security.

(b) All ceilings, walls, and floors in confinement units shall have a finished surface that is easily cleaned, nontoxic, and predominantly of light colors.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3413 SHOWERS AND PLUMBING FIXTURES

- (a) Each jail shall provide at least one shower for every eight inmates.
- (b) Showers shall have drains that prevent water from draining outside the shower, and the shower fixtures and drains shall be tamper-resistant if necessary for security.
- (c) Plumbing fixtures shall be made of stainless steel or other materials as necessary for security.
- (d) Drinking fountains shall be equipped with mouth guards.
- (e) All privacy partitions in showers and bathrooms shall be high enough to allow limited privacy for the inmates while still allowing adequate supervision by officers.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3414 WINDOWS AND GLAZING

- (a) Windows and window framing, including glazing, shall be made of materials necessary to provide the degree of security required for the area in which they are used.
- (b) Glazing shall be diffused or obscured if it affords a view into confinement units from outside the jail.
- (c) View panels shall be made of materials necessary to provide the degree of security required for the area in which they are used, and those used for confinement units shall have a minimum area of 180 square inches and permit observation of the entire unit.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3415 DOORS, BUNKS AND LOCKS

- (a) Doors, locks and detention hardware shall be made of materials necessary to provide the degree of security required for the area in which they are used.
- (b) Doors to all confinement units shall have view panels.
- (c) Doors shall operate independently of each other, and the cell doors in a cellblock shall be capable of simultaneous release during an emergency.
- (d) Doors and locks that are electronically controlled shall be equipped with manual override.
- (e) Food passes, if used, shall have large enough openings to permit the passage of a food tray.
- (f) Bunks shall have dimensions necessary to accommodate a standard detention mattress and they shall be securely anchored at least 15 inches above the floor. When one bunk is placed above another, the lower bunk shall be approximately 15 inches and the upper bunk approximately 50 inches above the floor.
- (g) Doors, locks, detention hardware and bunks shall be designed to inhibit their use for an attempted suicide.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3416 SAFETY EQUIPMENT

In each jail the safety equipment, including intercoms, fire extinguishers, smoke detectors, and sprinkler heads, shall be tamper-resistant if necessary for security.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3417 MECHANICAL SYSTEMS

(a) Each jail shall have heating, ventilation, and air conditioning systems that are capable of maintaining temperatures in confinement units at a minimum of 68 degrees Fahrenheit during the heating season and a maximum of 85 degrees Fahrenheit during the cooling season.

(b) The master controls for the system shall be located outside the confinement units and shall be accessible to officers during an emergency.

(c) The ducts for the systems shall be designed to prevent the escape of inmates and the passage of contraband, and they shall be designed to inhibit their use for attempted suicide.

(d) The ventilation system shall provide a minimum of ten cubic feet per minute of fresh or purified air for each inmate.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3418 PLUMBING SYSTEMS

(a) Each jail shall have a plumbing system that complies with the Commission for Health Services Rule 10 N.C.A.C. 10A and the North Carolina State Plumbing Code, both of which are hereby adopted by reference pursuant to G.S. 150B-14(c).

(b) Each jail shall have a hot water supply for lavatories and showers designed to meet the usual needs of the number of inmates confined in the jail.

(c) The master control valves for the plumbing system shall be located outside the confinement units and shall be accessible to officers during an emergency.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3419 ELECTRICAL SYSTEMS

(a) Each jail shall have an electrical system that provides artificial lighting in the confinement units of at least 30 footcandles and that can be reduced during sleeping hours.

(b) Artificial lighting in the corridors shall be at least 20 footcandles.

(c) Lighting fixtures shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(d) Each jail shall provide electrical and antenna or cable connections for a television in its dayroom areas.

(e) The master controls and circuit breakers shall be located outside the confinement units and shall be accessible to officers during an emergency.

(f) Each jail shall have an auxiliary emergency power supply for each electrical system.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3420 ADDITIONAL SECURITY REQUIREMENTS FOR "INSTITUTIONAL OCCUPANCY - RESTRAINED" JAILS

Each jail that is required to meet the "Institutional Occupancy - Restrained" requirements of the North Carolina State Building Code shall also meet the following security requirements:

- (1) Each jail shall have a separate entrance for inmates, and all entrances to the jail shall be controlled and visually and audibly monitored.
- (2) Each jail shall have security perimeter walls that are provided with a security vestibule, sally port, security window, security door, or other security device at each wall opening.
- (3) Clothing or towel hooks shall not be used.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3421 CONFINEMENT UNITS

The governing body shall decide what confinement unit or combination of confinement units it will include in its jail: single segregation cells, single cells, multiple occupancy cells, or dormitories.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3422 STANDARDS FOR SINGLE SEGREGATION CELLS

Each single cell used for segregation shall have:

- (1) a shower or access to a shower;
- (2) a telephone jack or other telephone arrangement provided within the cell;
- (3) a food pass;
- (4) a minimum floor space of 70 square feet, a minimum floor dimension of 7 feet, a toilet, a sink, a drinking fountain and a security mirror.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3423 STANDARDS FOR SINGLE CELLS

Each single cell shall have:

- (1) a minimum floor space of 50 square feet;
- (2) a minimum floor dimension of 7 feet;
- (3) a toilet, a sink, a drinking fountain and a security mirror; and
- (4) access to a dayroom.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3424 STANDARDS FOR MULTIPLE OCCUPANCY CELLS

Each multiple occupancy cell shall house no more than four inmates and shall have:

- (1) a minimum floor space of 50 square feet for the first inmate and 35 square feet of floor space for each additional inmate;
- (2) a minimum floor dimension of 7 feet;

- (3) a toilet, a sink, a drinking fountain and a security mirror; and
- (4) access to a dayroom.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3425 STANDARDS FOR DAYROOMS

Each dayroom shall have:

- (1) a security vestibule at its entrance;
- (2) a minimum floor space of 105 square feet or 35 square feet per inmate, whichever is greater;
- (3) sufficient seating and tables for each inmate;
- (4) a telephone jack or other telephone arrangement provided within the dayroom, and;
- (5) a way for officers to observe the entire area from the entrance.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.

.3426 STANDARDS FOR DORMITORIES

Each dormitory shall house no more than 40 inmates and shall have:

- (1) a minimum floor space of seventy (70) square feet per inmate including both the sleeping and dayroom area;
- (2) one shower per 8 inmates, one toilet per 6 inmates, one sink per 6 inmates, one water fountain and a security mirror;
- (3) a telephone jack or other telephone arrangement provided within the dormitory;
- (4) space designed to allow a variety of activities;
- (5) sufficient seating and tables for all inmates; and
- (6) a way for officers to observe the entire area from the entrance.

History Note: Statutory Authority G.S. 153A-221;
Eff. June 1, 1990.



