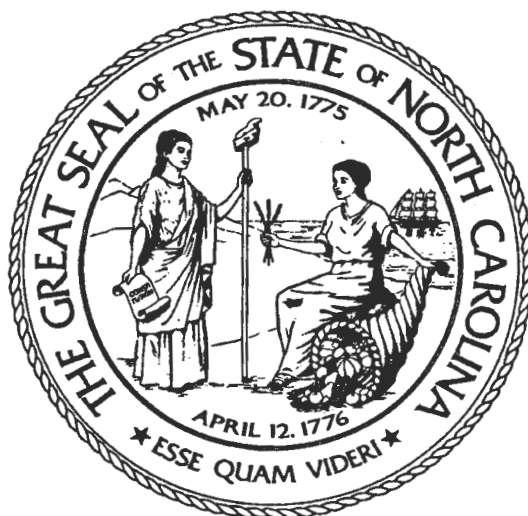


**LEGISLATIVE
RESEARCH COMMISSION**

**FIRE AND OCCUPATIONAL SAFETY AT
INDUSTRIAL AND COMMERCIAL FACILITIES**



**REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1992 SESSION**

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STATE OF NORTH CAROLINA
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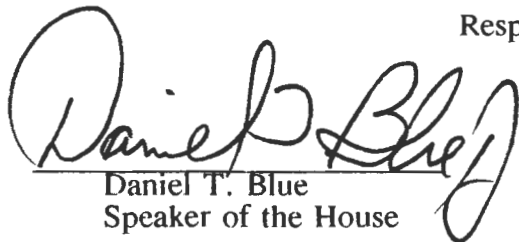


May 26, 1992

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY (SECOND SESSION 1992):

The Legislative Research Commission herewith submits to you for your consideration its report on fire and occupational safety. The report was prepared by the Legislative Research Commission's Committee on Fire and Occupational Safety at Industrial and Commercial Facilities at the direction of the Commission pursuant to its authority under G.S. 120-30.17(1).

Respectfully submitted,


Daniel T. Blue
Speaker of the House


Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission

;

1991-1992

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1991 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of fire and occupational safety was authorized by the Commission pursuant to G.S. 120-30.17(1). The relevant portions of G.S. 120-30.17 are included in Appendix A. The Legislative Research Commission grouped this study in its labor area under the direction of Representative W. Pete Cunningham. The Committee was chaired by Senator Aaron W. Plyler, Sr. and Representative Milton F. Fitch, Jr. The full membership of the Committee may be found at page iii of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Committee on Fire and Occupational Safety at Industrial and Commercial Facilities was created by the Legislative Research Commission in response to the fire at the Imperial Foods Processing plant in Hamlet, North Carolina. The purpose of the Committee is to determine what actions the State needs to take to ensure that workplace safety laws are being enforced effectively, and what, if any, additional legislation needs to be enacted to ensure compliance with safety laws and encourage expanded efforts on the part of employers to provide safe and healthy work environments.

The Committee held five meetings prior to its adoption of this report. The first two meetings took place in Raleigh on December 2, 1991 and January 6, 1992. The third meeting was a two day meeting held at City Hall in Hamlet, North Carolina on February 24 and 25, 1992. The fourth and fifth meetings were both two-day meetings. The fourth meeting was held in Raleigh on March 23 and 24, 1992, and the fifth meeting was held in Raleigh on April 6 and 7, 1992.

The first four meetings were designed to provide information on: (i) status of the State agency investigation into the Imperial Foods fire, (ii) safety and health responsibilities of State and federal agencies, and (iii) views from the private sector on what is happening in the workplace with respect to health and safety issues. The fifth meeting was a work session during which the Committee discussed and took action on recommendations for the improvement of health and safety in North Carolina's workplaces.

During its deliberations the Committee heard from the following agencies and individuals: North Carolina Departments of: Labor, Insurance, Administration, and Transportation; the State Bureau of Investigation, the N. C. Building Code Council, the Code Officials Qualifications Board, North Carolina State University, East Carolina

University, the Industrial Commission, and the Office of State Personnel. Representatives from the United States Department of Agriculture presented information to the Committee at its January meeting. Individuals presenting views from the private sector included representatives of nonprofit health and safety advocacy organizations, members of business and industry professional associations, municipal organizations, private employers, and workers. The minutes of each meeting of the Committee provide detail on the presentations and recommendations made by each person who addressed the Committee.

At the first meeting the Commissioner of Insurance, Jim Long, presented information on what duties the Department has related to the enforcement of safety laws. Those responsibilities include oversight and enforcement of the State Building Code and the newly enacted State fire code provisions, as well as responsibility for certification of building inspectors. Commissioner Long's overall recommendation to the Committee related to the need for educating workers about safety and health hazards in the workplace. The Commissioner of Labor, John Brooks, gave a presentation to the committee that included an update of the Department's involvement in the investigation of the Imperial Foods fire, an explanation of federal OSHA requirements that impact on the Department's enforcement of OSHA regulations, a review of the Department's budget relating to hiring OSHA inspectors, and a list of recommendations to improve workplace safety and health. Mr. Charles Dunn, Director of the State Bureau of Investigation gave the committee an update on his agency's investigation of the Imperial Foods fire. Mr. Dunn's presentation was a general discussion of what happened at Imperial; he was prohibited from discussing specifics about the fire because the agency's investigation was not complete at that time. The Bureau has since released its findings to the District Attorney of Richmond County, but

the report of these findings is not a public document and therefore could not be obtained for Committee members.

At the second meeting the Committee heard from the Building Code Council and the Code Officials Qualifications Board pertaining to current activities of the Council and the certification, training, and testing of fire code enforcement officials. The Committee also heard from Mark Schulz, Director of the North Occupational Safety and Health Project, a nonprofit organization that provides workers with technical assistance, training, and advice concerning work related safety and health. The organization also mobilizes its members and supporters to advocate for the enforcement of existing laws and the passage of new laws to make workplaces safer and healthier. In his presentation, Mr. Schulz called upon the General Assembly to enact three reforms in the area of workplace safety. The reforms suggested were: establishment of worker-management safety committees in workplaces with ten or more employees; triple the number of health and safety inspectors in the Department of Labor; and extend penalties for violations of OSHA laws to the public sector. Mr. Schulz requested the opportunity to make another presentation before the Committee which would include specific recommendations for new legislation. Persons representing the views of business and industry also made presentations at this meeting. Among those persons were Mr. Phil Kirk, a member of the Committee and the Executive Director of North Carolina Citizens for Business and Industry; Mr. William Chandler, Committee member and Vice President of Glen Raven Mills, and Mr. Ted Reynolds, plant engineer for Tyson Foods. Business and industry representatives reminded Committee members that there are many private employers who are doing a good job in complying with workplace safety and health laws and in taking extra steps to ensure that their workplaces are safe and healthy. Representatives of business and industry urged Committee members not to hold all businesses responsible for the bad acts or omissions

of a few. Two representatives from the United States Department of Agriculture presented information to the Committee on the role and responsibilities of USDA inspectors. Dr. Will Horn, Chief of the USDA Food Safety Inspection Unit reported that his agency and the U.S. Department of Labor were jointly considering several proposals to improve communications between those agencies such that resources are used efficiently and effectively to identify workplace hazards and report the hazards to the appropriate enforcing authority.

The Committee decided to hold its third meeting in Hamlet, N.C. in order to provide workers with an opportunity to present their views about safety and health in the workplace. Over 15 persons testified before the committee, almost all of whom were former employees who had experienced illness or injury on their job, or who had observed unsafe working conditions at their place of employment. Of the former employees who testified, two were employed by or represented persons who had been employed by Imperial Foods. Many of the workers who testified told of injuries they sustained resulting from unsafe exposure to hazardous chemicals and repetitive motion work tasks. Others described injuries they received as a result of defective or unsafe equipment, or the lack or improper use of safety equipment. The most often repeated recommendations of workers who testified included: require worker-management safety committees; require worker training on safety matters, use of equipment, and handling hazardous materials; protect workers against retaliation by employers when workers report hazards; protect workers who are fired because of absence due to job-related illness or injury; allow private right of action for willful conduct by employers that causes injury to employees.

The fourth meeting focused on workplace OSHA violations and unsafe conditions at North Carolina State University and work sites under the supervision of the Department of Administration and Department of Transportation. The meeting also

provided a second opportunity for employers and workers to testify before the Committee. On the second day of the meeting persons representing the Department of Labor, Department of Insurance, Office of State Personnel, the N.C. Industrial Commission, the Building Code Council, East Carolina University, and the Hamlet Response Coalition made presentations and recommendations to the Committee. Representatives of State agencies that were reported as having unsafe working conditions and/or repeated OSHA violations discussed those conditions and violations with Committee members and reported on the steps they are taking to ensure better compliance with safety laws. Employers who testified discussed the procedures they have in place to make their working environment safer for employees and to reduce workers' compensation claims and premiums. Workers who testified reported many of the same illnesses, injuries, and conditions as were reported by workers at the meeting in Hamlet. The illnesses and injuries related primarily to exposure to hazardous materials such as asbestos, lack of response to complaints of unsafe conditions by employees, and termination for job-related illness. At the close of this meeting staff were instructed to incorporate into a document for review the recommendations made to the Committee during the entire course of its deliberations. This document was prepared by staff and reviewed by the Committee at its fifth meeting.

The Committee's fifth meeting was devoted to reviewing a 47-page document prepared by the staff containing proposed legislation for the Committee's action. (See Appendix B). The document reflected the prioritized recommendations made by various organizations and committee members to the Committee. The Committee spent two days reviewing the legislation and took action on each proposal. The proposals included recommendations on fire and building safety, access by the Department of Labor to safety-related data of other agencies, safety committees and safety programs for employees, targeted OSHA inspections, workers compensation benefits, retaliatory

discrimination, and related matters. The Committee recommended the following sections, some with amendments: 2, 3(amended), 5, 6-9(amended), 10, 11, 12, 12.1, 13(amended), 15(amended), 15.1, 19(amended), 19.1, 20, 20.1, 21(amended), 22, 24(amended), 24.5, 26, 26.1, 26.2, 26.3, 27(amended), and 27.3(amended). The Committee also added protection for employees who use machinery on which the employer has caused the guards to be removed.

At its final meeting before the short session, the Committee authorized the Co-Chairmen to write a letter on behalf of the Committee to the Secretary of the United States Department of Labor and to the Secretary of the United States Department of Agriculture providing them with a copy of the Committee's report to the 1991 General Assembly (Regular Session 1992) and urging them to share information with State agency officials who are charged with the enforcement of workplace health and safety laws. In its letter to the Secretary of Labor, the Committee requested that the Secretary not withdraw approval of the North Carolina Occupational Safety and Health State Plan. A copy of the letters are attached as Appendix C to to this report.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

D

FOS-3
THIS IS A DRAFT 28-APR-92 14:09:53

Short Title:

(Public)

Sponsors:

Referred to:

1
2
3
4
5

Short Title: Fire Code Enforcement

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ENFORCEMENT OF THE BUILDING CODE BY A
MUNICIPALITY IN ITS EXTRATERRITORIAL JURISDICTION AND TO
PROVIDE FOR APPOINTMENTS OF MINORITIES AND WOMEN TO THE
BUILDING CODE COUNCIL.

The General Assembly of North Carolina enacts:

Sec. 1. G.S. 143-138(e) reads as rewritten:

" (e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction or a fire prevention code within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the ~~municipality~~; municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building

1 Code in its particular political subdivision. Whenever the Building Code Council
2 adopts an amendment to the State Building Code, it shall consider any previously
3 approved local regulations dealing with the same general matters, and it shall have
4 authority to withdraw its approval of any such local code or regulations unless the local
5 governing body makes such appropriate amendments to that local code or regulations as
6 it may direct. In the absence of approval by the Building Code Council, or in the
7 event that approval is withdrawn, local codes and regulations shall have no force and
8 effect. Provided any local regulations approved by the local governing body which are
9 found by the Council to be more stringent than the adopted statewide fire prevention
10 code and which are found to regulate only activities and conditions in buildings,
11 structures, and premises that pose dangers of fire, explosion or related hazards, and are
12 not matters in conflict with the State Building Code, shall be approved."

13 Sec.2. G.S. 143-136(a) reads as rewritten:

14 "(a) Creation; Membership; Terms. -- There is hereby created a Building Code
15 Council, which shall be composed of ~~13~~ 15 members appointed by the Governor,
16 consisting of one registered architect, one licensed general contractor, one registered
17 architect or licensed general contractor specializing in residential design or
18 construction, one registered engineer practicing structural engineering, one registered
19 engineer practicing mechanical engineering, one registered engineer practicing electrical
20 engineering, one licensed plumbing and heating contractor, one municipal or county
21 building inspector, one licensed liquid petroleum gas dealer/contractor involved in the
22 design of natural and liquid petroleum gas systems who has expertise and experience in
23 natural and liquid petroleum gas piping, venting and appliances, a representative of the
24 public who is not a member of the building construction industry, a licensed electrical
25 contractor, a registered engineer on the engineering staff of a State agency charged
26 with approval of plans of State-owned buildings, a municipal elected official or city
27 manager, a county commissioner or county manager, and an active member of the
28 North Carolina fire service with expertise in fire safety. Of the members initially
29 appointed by the Governor, three shall serve for terms of two years each, three shall
30 serve for terms of four years each, and three shall serve for terms of six years each.
31 Thereafter, all appointments shall be for terms of six years. The Governor may remove
32 appointive members at any time. Neither the architect nor any of the above named
33 engineers shall be engaged in the manufacture, promotion or sale of any building
34 material, and any member who shall, during his term, cease to meet the qualifications
35 for original appointment (through ceasing to be a practicing member of the profession
36 indicated or otherwise) shall thereby forfeit his membership on the Council. In making
37 new appointments or filling vacancies, the Governor shall ensure that minorities and
38 women are represented on the Council.

39 The Governor may make appointments to fill the unexpired portions of any terms
40 vacated by reason of death, resignation, or removal from office. In making such
41 appointment, he shall preserve the composition of the Council required above."

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

1 **Short Title: FATALITY & INJURY REPORTS**

2

3 A BILL TO BE ENTITLED AN ACT TO REQUIRE EMPLOYERS TO REPORT
4 AT LEAST ANNUALLY ON FATALITIES AND SERIOUS INJURIES IN THE
5 WORKPLACE, TO REQUIRE THE REPORTING OF CERTAIN SAFETY DATA TO
6 THE COMMISSIONER OF LABOR BY VARIOUS AGENCIES, AND TO ENSURE,
7 WHERE APPROPRIATE, THE CONFIDENTIALITY OF DATA RELEASED TO THE
8 COMMISSIONER.

9

10 The General Assembly of North Carolina enacts:

11 Sec. 1. G.S. 95-143 reads as rewritten:

12 "§ 95-143. Record keeping and reporting.

13 (a) Each employer shall make available to the Commissioner, or his agents, in such
14 manner as the Commissioner shall require, copies of the same records and reports
15 regarding his activities relating to this Article as are required to be made, kept, or
16 preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970
17 (P.L. 91-596) and regulations made pursuant thereto.

18 (b) Each employer shall make, keep and preserve and make available to the
19 Commissioner such records regarding his activities relating to this Article as the
20 Commissioner may prescribe by regulation as necessary and appropriate for the
21 enforcement of this Article or for developing information regarding the causes and
22 prevention of occupational accidents and illnesses. In order to carry out the provisions
23 of this section such regulations may include provisions requiring employers to conduct
24 periodic inspections. The Commissioner shall also issue regulations requiring that
25 employers, through posting of notices or other appropriate means, keep the employees
26 informed of their protections and obligations under this Article, including the provisions
27 of applicable standards. The Commissioner shall prescribe regulations requiring
28 employers to maintain accurate records of, and to make periodic reports at least
29 annually on, work-related deaths, injuries and illnesses other than minor injuries
30 requiring only first-aid treatment and which do not involve medical treatment, loss of
31 consciousness, restriction of work or motion, or transfer to another job.

32 (c) The Commissioner shall issue regulations requiring employers to maintain
33 accurate records of employee exposure to potentially toxic materials of [or] harmful
34 physical agents which are required to be monitored or measured under this Article.
35 Such regulations shall provide employees or their representatives with an opportunity to
36 observe such monitoring or measuring, and to have access to the records thereof. Such
37 regulations shall also make appropriate provisions for each employee or former
38 employee to have access to such records as will indicate his own exposure to toxic
39 materials or harmful physical agents. Each employer shall promptly notify any
40 employee who has been or is being exposed to toxic materials or harmful physical
41 agents in concentrations or at levels which exceed those prescribed by an applicable
42 safety and health standard promulgated under this Article and shall inform any
43 employee who is being thus exposed of the corrective action being taken.

1 (d) Any information obtained by the Commissioner or his duly authorized agents
2 under this Article shall be obtained with a minimum burden upon employers, especially
3 those operating small businesses. Unnecessary duplication of efforts in obtaining
4 information shall be reduced to the maximum extent feasible."

5 Sec. 2. G.S. 97-81 reads as rewritten:

6 "**§ 97-81. Blank forms and literature; statistics; safety provisions; accident reports;
7 studies and investigations and recommendations to General Assembly; to cooperate
8 with other agencies for prevention of injury.**

9 (a) The Commission shall prepare and cause to be printed, and upon request furnish,
10 free of charge to any employee or employer, such blank forms and literature as it shall
11 deem requisite to facilitate or prompt the efficient administration of this Article.

12 (b) The Commission shall tabulate the accident reports received from employers in
13 accordance with G.S. 97-92 and shall publish the same in the annual report of the
14 Commission and as often as it may deem advisable, in such detailed or aggregate form
15 as it may deem best. The name of the employer or employee shall not appear in such
16 publications, and the employers' reports shall be private records of the Commission,
17 and shall not be open for public inspection except for the inspection of the parties
18 directly involved, and only to the extent of such ~~interest~~, interest, and except for
19 inspection by the Department of Labor and other State or federal agencies pursuant to
20 subsections (d) and (e) of this section. These reports shall not be used as evidence
21 against any employer in any suit at law brought by any employee for the recovery of
22 damages.

23 (c) The Commission shall make studies and investigations with respect to safety
24 provisions and the causes of injuries in employments covered by this Article, and shall
25 from time to time make to the General Assembly and to employers and carriers such
26 recommendations as it may deem proper as to the best means of preventing such
27 injuries.

28 (d) In making such studies and investigations the Commission ~~is authorized~~ shall:

29 (1) ~~To~~ cooperate with any agency of the United States charged with the
30 duty of enforcing any law securing safety against injury in any
31 employment covered by this Article, or with any State agency engaged
32 in enforcing any laws to assure safety for employees, and

33 (2) ~~To~~ permit any such agency to have access to the records of the
34 Commission.

35 In carrying out the provisions of this section the Commission or any officer or
36 employee of the Commission is authorized to enter at any reasonable time upon any
37 premises, tracks, wharf, dock, or other landing place, or to enter any building, where
38 an employment covered by this Article is being carried on, and to examine any tool,
39 appliance, or machinery used in such employment.

40 (e) The Commission shall, upon written request from the Department of Labor,
41 provide from the Commission's records the following information from claims filed by
42 employees, and from employer reports of injury to an employee required by G.S. 97-
43 92:

44 (1) name and business address of the employer;

- 1 (2) type of business of the employer;
- 2 (3) date the accident, illness, or injury occurred;
- 3 (4) nature of the injury or disease reported; and
- 4 (5) whether compensation for disability or medical expenses was paid to
- 5 the injured employee.

6 Information provided to the Department of Labor pursuant to this subsection, and to
7 other State and federal agencies pursuant to subsection (d) of this section, shall be
8 private and exempt from public inspection to the same extent that records of the
9 Commission are so exempt."

10 Sec. 3. G.S. 97-92(b) reads as rewritten:

11 "(b) The records of the Commission, insofar as they refer to accidents, injuries, and
12 settlements shall not be open to the public, but only to the parties satisfying the
13 Commission of their interest in such records and the right to inspect ~~them~~, them, and to
14 State and federal agencies pursuant to G.S. 97-81."

15 Sec. 4. Chapter 58 of the General Statutes is amended by adding a new
16 section to read:

17 "§ 58-36-15.1. Bureau to share information with certain State agencies.

18 The Bureau shall provide to the Department of Labor information from the Bureau's
19 records indicating each employer's experience modification rating established for the
20 purpose of setting premium rates for workers compensation insurance. Information
21 provided to the Department of Labor under this section shall include the name of the
22 employer and the employer's most current experience modification rating. The
23 information provided to the Department under this section shall be confidential and not
24 open for public inspection. The Bureau shall be immune from civil liability for
25 erroneous information released by the Bureau pursuant to this section provided that the
26 Bureau acted in good faith and without malicious or wilful intent to harm in releasing
27 the erroneous information."

28 Sec. 5. Chapter 58 of the General Statutes is amended by adding a new
29 section to read:

30 "§ 58-2-225. Commissioner to share information with Department of Labor.

31 The Commissioner shall provide to the Department of Labor, on an annual basis, the
32 name and business address of every employer whose workers compensation coverage is
33 provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information
34 provided by the Commissioner to the Department of Labor under this section is
35 confidential and not open for public inspection under G.S. 132-6."

36 Sec. 6. G.S. 130A-385(a) reads as rewritten:

37 "(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall
38 take charge of the body, make inquiries regarding the cause and manner of death,
39 reduce the findings to writing and promptly make a full report to the Chief Medical
40 Examiner on forms prescribed for that purpose. In cases where the death occurred in
41 the course of the decedent's employment, the medical examiner shall include in the
42 information provided to the Chief Medical Examiner the address or location where the
43 death occurred and the name of the deceased person's employer. Within 30 days of
44 receipt of this information from the medical examiner, the Chief Medical Examiner

1 shall forward to the Commissioner of Labor the cause and manner of death, the address
2 or location where the death occurred, and the name of the deceased person's employer.

3 The Chief Medical Examiner or the county medical examiner is authorized to inspect
4 and copy the medical records of the decedent whose death is under investigation. In
5 addition, in an investigation conducted pursuant to this Article, the Chief Medical
6 Examiner or the county medical examiner is authorized to inspect all physical evidence
7 and documents which may be relevant to determining the cause and manner of death of
8 the person whose death is under investigation, including decedent's personal
9 possessions associated with the death, clothing, weapons, tissue and blood samples,
10 cultures, medical equipment, X rays and other medical images. The Chief Medical
11 Examiner or county medical examiner is further authorized to seek an administrative
12 search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties
13 imposed under this Article. In addition to the requirements of G.S. 15-27.2, no
14 administrative search warrant shall be issued pursuant to this section unless the Chief
15 Medical Examiner or county medical examiner submits an affidavit from the office of
16 the district attorney in the district in which death occurred stating that the death in
17 question is not under criminal investigation.

18 The Chief Medical Examiner shall provide directions as to the nature, character and
19 extent of an investigation and appropriate forms for the required reports. The facilities
20 of the central and district offices and their staff services shall be available to the medical
21 examiners and designated pathologists in their investigations."

22 Sec. 7. This act is effective upon ratification.

1 **SHORT TITLE: PUBLIC AGENCIES / OSHA FINES**

2

3

A BILL TO BE ENTITLED

4 AN ACT TO PERMIT THE COMMISSIONER OF LABOR TO IMPOSE PENALTIES
5 AGAINST PUBLIC AGENCIES FOR OSHA VIOLATIONS.

6

7 The General Assembly of North Carolina enacts:

8 Sec. 1. G.S. 95-148 reads as rewritten:

9 **"§ 95-148. Safety and health programs of State agencies and local governments.**10 It shall be the responsibility of each administrative department, commission, board,
11 division or other agency of the State and of counties, cities, towns and subdivisions of
12 government to establish and maintain an effective and comprehensive occupational
13 safety and health program which is consistent with the standards and regulations
14 promulgated under this Article. The head of each agency shall:

- 15 (1) Provide safe and healthful places and conditions of employment,
-
- 16 consistent with the standards and regulations promulgated by this
-
- 17 Article;
-
- 18 (2) Acquire, maintain, and require the use of safety equipment, personal
-
- 19 protective equipment, and devices reasonably necessary to protect
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- 20 employees;
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- 21 (3) Consult with and encourage employees to cooperate in achieving safe
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- 22 and healthful working conditions;
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- 23 (4) Keep adequate records of all occupational accidents and illnesses for
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- 24 proper evaluation and corrective action;
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- 25 (5) Consult with the Commissioner as to the adequacy as to form and
-
- 26 content of records kept pursuant to this section;
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- 27 (6) Make an annual report to the Commissioner with respect to
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- 28 occupational accidents and injuries and the agency's program under
-
- 29 this section.

30 The Commissioner shall transmit annually to the Governor and the General Assembly
31 a report of the activities of the State agency and instrumentalities under this section. If
32 the Commissioner has reason to believe that any local government program or program
33 of any agency of the State is ineffective, he shall, after unsuccessfully seeking by
34 negotiations to abate such failure, include this in his annual report to the Governor and
35 the General Assembly, together with the reasons therefor, and may recommend
36 legislation intended to correct such condition.37 The Commissioner shall have access to the records and reports kept and filed by
38 State agencies and instrumentalities pursuant to this section unless such records and
39 reports are required to be kept secret in the interest of national defense, in which case
40 the Commissioner shall have access to such information as will not jeopardize national
41 defense.42 ~~The Commissioner will not impose civil or criminal penalties against any State~~
43 ~~agency or political subdivision for violations described and covered by this Article.~~

1 Employees of any agency or department covered under this section are afforded the
2 same rights and protections as granted employees in the private sector.

3 This section shall not apply to volunteer fire departments not a part of any
4 municipality.

5 Any municipality with a population of 10,000 or less may exclude its fire department
6 from the operation of this section by a resolution of the governing body of the
7 municipality, except that the resolution may not exclude those firefighters who are
8 employees of the municipality.

9 The North Carolina Fire and Rescue Commission shall recommend regulations and
10 standards for fire departments."

11 Sec. 2. This act is effective upon ratification and applies to violations
12 occurring on or after that date.

1 **SHORT TITLE: STATE WORKPLACE SAFETY**

2

3 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A WORKPLACE
4 REQUIREMENTS PROGRAM FOR THE SAFETY AND HEALTH OF ALL STATE
5 EMPLOYEES.

6

7 The General Assembly of North Carolina enacts:

8 Sec. 1. Chapter 143 of the General Statutes is amended by adding a new
9 Article to read:

10

11

"Article 63.

12

**"State Employees Workplace Requirements Program
13 for Safety and Health**

14

15 **"§ 143-580. Program goals.**

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Each State agency shall establish a written program for State employee workplace safety and health. The program shall promote safe and healthful working conditions and shall be based on clearly stated goals and objectives for meeting the goals. The program shall provide managers, supervisors, and employees with a clear and firm understanding of the State's concern for protecting employees from job-related injuries and health impairment; preventing accidents and fires; planning for emergencies and emergency medical procedures; identifying and controlling physical, chemical and biological hazards in the workplace; communicating potential hazards to employees; and assuring adequate housekeeping and sanitation.

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"§ 143-581. Program Requirements.

The written program required under this Article shall describe, at a minimum:

- (1) the methods to be used to identify, analyze and control new or existing hazards, conditions and operations;
- (2) how managers, supervisors and employees are responsible for implementing the program, controlling accident-related expenditures and how continued participation of management and employees will be established, measured and maintained;
- (3) how the plan will be communicated to all affected employees so that they are informed of work-related physical, chemical or biological hazards and controls necessary to prevent injury or illness;
- (4) how managers, supervisors, and employees will receive training in avoidance of job-related injuries and health impairment;
- (5) how workplace accidents will be reported and investigated and how corrective actions will be implemented;
- (6) how safe work practices and rules will be communicated and enforced;
- (7) the safety and health training program that will be made available to employees;
- (8) how employees can make complaints concerning safety and health problems without fear or retaliation; and

1 (9) how employees will receive medical attention following a work-related
2 injury or illness.

3 **"§ 143-582. Model Program; technical assistance; reports; definitions.**

4 (a) The State Personnel Commission, through the Office of State Personnel, shall:

- 5 (1) maintain a model program of safety and health requirements to guide
6 State agencies in the development of their individual programs and in
7 complying with the provisions of G.S. 95-148 and this Article; and
8 (2) establish guidelines for the creation and operation of State agency
9 safety and health committees.

10 (b) The Office of State Personnel shall:

- 11 (1) provide consultative and technical services to assist State agencies in
12 establishing and administering their workplace safety and health
13 programs and to address specific technical problems; and
14 (2) monitor compliance with this Article.

15 (c) The State Personnel Commission shall report annually to the Joint Legislative
16 Commission on Governmental Operations on the safety and health activities of State
17 agencies, compliance with this Article, and the fines levied against State agencies
18 pursuant to Article 16 of Chapter 95 of the General Statutes.

19 (d) For purposes of this Article, 'State agency' means any department, commission,
20 division, board, or institution of the State."

21 **"§ 143-583. State agency safety and health committees. Each State agency shall**
22 create, pursuant to guidelines adopted under subsection (a) of G.S. 143-582, safety and
23 health committees to perform workplace inspections, review injury and illness records,
24 make advisory recommendations to the agency's managers, and perform other functions
25 determined by the State Personnel Commission to be necessary for the effective
26 implementation of the State Employees Workplace Requirements Program for Safety
27 and Health."

28 Sec. 2. G.S. 126-4(10) reads as rewritten:

29 " (10) Programs of ~~safety, health,~~ employee assistance, productivity
30 incentives, and equal opportunity opportunity; programs of safety and
31 health as contained in Article 63 of Chapter 143 of the General
32 Statutes; and such other programs and procedures as may be necessary
33 to promote efficiency of administration and provide for a fair and
34 modern system of personnel administration. This subdivision may not
35 be construed to authorize the establishment of an incentive pay
36 program."

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

1 SHORT TITLE: SAFETY REORGANIZATION TASK FORCE

2

3 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN INTER-AGENCY
4 TASK FORCE TO STUDY THE REORGANIZATION OF STATE AGENCIES
5 INVOLVED WITH OCCUPATIONAL SAFETY AND HEALTH AND FIRE SAFETY
6 RESPONSIBILITIES AND TO REPORT TO THE LRC COMMITTEE ON FIRE AND
7 OCCUPATIONAL SAFETY AT INDUSTRIAL AND COMMERCIAL FACILITIES
8 BY OCTOBER 1, 1992.

9

10 The General Assembly of North Carolina enacts:

11 Sec. 1. There is hereby established the Inter-agency Task Force on State
12 Agency Oversight of Workplace Safety and Health. The Task Force shall study the
13 regulatory responsibilities of State and local governmental agencies involved with
14 workplace safety and health and fire safety. The members shall include a representative
15 of each of the following:

- 16 (a) The Commissioner of Labor, who shall also chair the Task Force;
- 17 (b) The Commissioner of Insurance or a designee;
- 18 (c) The Secretary of the Department of Environment, Health, and Natural
19 Resources or a designee;
- 20 (d) The Chairman of the Industrial Commission or a designee;
- 21 (e) The Chairman of the Public Utilities Commission or a designee;
- 22 (f) The Secretary of the Department of Transportation or a designee;
- 23 (g) The Chairman of the State Personnel Commission or a designee;
- 24 (h) A community college representative appointed by the President of the
25 North Carolina System of Community Colleges; and
- 26 (i) Two local officials, one selected by the North Carolina League of
27 Municipalities and the other selected by the North Carolina
28 Association of County Commissioners.

29 The Task Force shall submit a written report to the LRC Study Committee on Fire
30 and Occupational Safety at Industrial and Commercial Facilities no later than October
31 1, 1992. The report shall recommend a proposed reorganization of the occupational
32 health and safety and fire safety network within State and local government to better
33 address the needs of employers and employees in this State. Except for cause, the
34 same designee shall serve from the inception of the Task Force until the issuance of the
35 final report.

36 The proposed reorganization should accomplish the following goals:

- 37 (a) Be as consolidated and coordinated as possible with clear areas of
38 responsibility and clear lines of authority;
- 39 (b) Be devoid of duplication;
- 40 (c) Be devoid of political or special interest influence;
- 41 (d) Be able to respond quickly, efficiently and effectively to reports of
42 unsafe conditions and to emergencies;
- 43 (e) Clarify the role of local government in fire and safety protection in the
44 workplaces in their jurisdictions;

- 1 (f) Fully utilize the community colleges in training inspectors and offering
2 programs for safety committees and businesses that seek to improve
3 worker safety;
4 (g) Consider contracting with local fire agencies for inspections before
5 adding more people to the state payroll;
6 (h) Develop an educational component that will include the creation and
7 distribution of educational materials regarding workplace safety laws
8 and duties of employers and rights of workers, including brochures,
9 fliers, posters, public service spots for radio and television, newspaper
10 and magazine articles; and
11 (i) Include proposals for establishing supplementary inspection programs
12 in addition to those authorized under the Occupational Safety and
13 Health Act.

14 The Department of Labor shall provide clerical and professional assistance to
15 the Task Force.

16 Sec. 2. This act is effective upon ratification.

1 **SHORT TITLE: OSHA INSPECTION SERVICES**

2

3 A BILL TO BE ENTITLED AN ACT TO CREATE A SPECIAL EMPHASIS
4 PROGRAM TO TARGET OSHA INSPECTIONS.

5

6 The General Assembly of North Carolina enacts:

7 Sec. 1. Article 16 of Chapter 95 of the General Statutes is amended by
8 adding a new section to read:

9 "§ 95-136.1. Special emphasis inspection program.

10 (a) As used in this section, a 'special emphasis inspection' is
11 an inspection by the Department's occupational safety and health division that is:

12 (1) scheduled randomly and more frequently than a general schedule
13 inspection, and

14 (2) scheduled because of an employer's high frequency of violations of
15 safety and health laws or because of an employer's high risk or high
16 rate of work-related fatalities or work-related serious injuries or
17 illnesses.

18 (b) The Department shall develop and implement a special emphasis inspection
19 program that targets for special emphasis inspection employers who:

20 (1) have a high rate of serious or willful violations of any standard, rule,
21 order, or other requirement under this Article, or of regulations
22 prescribed pursuant to the Federal Occupational Safety and Health Act
23 of 1970, in a one year period, or

24 (2) have a high rate of work-related deaths, or a high rate of work-related
25 serious injuries or illnesses, in a one year period, or

26 (3) are engaged in a type of industry determined by the Department to be
27 at high risk for serious or fatal work-related injuries or illnesses, or

28 (4) have an experience modification rating established for workers'
29 compensation premium rates that is significantly higher than the State
30 average. For purposes of targeting employers under this subdivision,
31 the Department, in consultation with the North Carolina Rate Bureau
32 and the Commissioner of Insurance, shall set the experience
33 modification rating threshold for determining a rating that is
34 significantly higher than the State average.

35 To identify employers for special emphasis inspections, the Department shall use the
36 most current data available from its own data base and from other sources, including
37 State departments, divisions, boards, commissions and other State entities. The
38 Department shall ensure that every employer targeted for special emphasis inspection is
39 inspected at least one time within the two year period following targeting of the
40 employer by the Department. The Department shall update its special emphasis
41 inspection records at least annually.

42 (c) The Director shall make information about the special emphasis inspection
43 program available to all employers in the State at least 30 days prior to the date of
44 implementation of the program.

1 (d) The Department shall, two years after the initial implementation of the special
2 emphasis inspection program, and annually thereafter, report to the Joint Legislative
3 Commission on Governmental Operations and the Fiscal Research Division the impact
4 that the special emphasis inspection program is having on safety and health compliance
5 and enforcement."

6 Sec. 2. This act is effective upon ratification. The Department shall begin
7 the development of the special emphasis inspection program immediately upon
8 ratification of this act. The special emphasis inspection program shall become
9 operational not later than July 1, 1993.

1 SHORT TITLE: SAFETY PROVISIONS / CONTRACTS

2

3 A BILL TO BE ENTITLED AN ACT TO REQUIRE STATE CONSTRUCTION
4 SITE SAFETY STUDY AND THE DESIGNATION OF SAFETY OFFICERS ON
5 STATE CONSTRUCTION SITES AND TO REQUIRE MINORITY AND WOMEN
6 REPRESENTATION ON THE STATE BUILDING COMMISSION.

7

8 The General Assembly of North Carolina enacts:

9

Sec. 1. G.S. 143-135.26 reads as rewritten:

10

"§ 143-135.26. Powers and duties of the Commission. The State Building
11 Commission shall have the following powers and duties with regard to the State's
12 capital facilities development and management program:

13

(1) To adopt rules establishing standard procedures and criteria to assure
14 that the designer selected for each State capital improvement project
15 and the consultant selected for planning and studies of an architectural
16 and engineering nature associated with a capital improvement project
17 or a future capital improvement project has the qualifications and
18 experience necessary for that capital improvement project or the
19 proposed planning or study project. The rules shall provide that the
20 State Building Commission, after consulting with the funded agency,
21 is responsible and accountable for the final selection of the designer
22 and the final selection of the consultant except when the General
23 Assembly or The University of North Carolina is the funded agency.
24 When the General Assembly is the funded agency, the Legislative
25 Services Commission is responsible and accountable for the final
26 selection of the designer and the final selection of the consultant, and
27 when the University is the funded agency, it shall be subject to the
28 rules adopted hereunder, except it is responsible and accountable for
29 the final selection of the designer and the final selection of the
30 consultant. All designers and consultants shall be selected within 60
31 days of the date funds are appropriated for a project by the General
32 Assembly or the date of project authorization by the Director of the
33 Budget; provided, however, the State Building Commission may grant
34 an exception to this requirement upon written request of the funded
35 agency if (i) no site was selected for the project before the funds were
36 appropriated or (ii) funds were appropriated for advance planning
37 only.

38

The State Building Commission shall submit a written report to
39 the Joint Legislative Commission on Governmental Operations
40 on the Commission's selection of a designer for a project within
41 30 days of selecting the designer.

42

(2) To adopt rules for coordinating the plan review, approval, and permit
43 process for State capital improvement projects.

43

- 1 (3) To adopt rules for establishing a post-occupancy evaluation, annual
2 inspection and preventive maintenance program for all State buildings.
3 (4) To develop procedures for evaluating the work performed by designers
4 and contractors on State capital improvement projects and for use of
5 the evaluations as a factor affecting designer selections and
6 determining qualification of contractors to bid on State capital
7 improvement projects.
8 (5) To continuously study and recommend ways to improve the
9 effectiveness and efficiency of the State's capital facilities development
10 and management program.
11 (6) To request designers selected prior to April 14, 1987, whose plans for
12 the projects have not been approved to report to the Commission on
13 their progress on the projects. The Department of Administration
14 shall provide the Commission with a list of all such projects.
15 (7) To appoint an advisory board, if the Commission deems it necessary,
16 to assist the Commission in its work. No one other than the
17 Commission may appoint an advisory board to assist or advise it in its
18 work; and

19 ~~The Commission shall submit an annual report of its activities to the~~
20 ~~Governor and the Joint Legislative Commission on Governmental~~
21 ~~Operations.~~

- 22 (8) To review the State's provisions for ensuring the safety and health of
23 employees involved with State capital improvement projects, and to
24 recommend to the appropriate agencies and to the General Assembly,
25 after consultation with the Commissioner of Labor, changes in the
26 terms and conditions of construction contracts, State regulations, or
27 State laws that will enhance employee safety and health on these
28 projects.

29 The Commission shall submit an annual report of its activities to the
30 Governor and the Joint Legislative Commission on Governmental
31 Operations."

32 Sec. 2. G.S. 143-135.25(c) reads as rewritten:

33 "(c) The Commission shall consist of nine members qualified and appointed as
34 follows:

- 35 (1) A licensed architect whose primary practice is or was in the design of
36 buildings, chosen from among not more than three persons nominated
37 by the North Carolina Chapter of the American Institute of Architects,
38 appointed by the Governor.
39 (2) A registered engineer whose primary practice is or was in the design
40 of engineering systems for buildings, chosen from among not more
41 than three persons nominated by the Consulting Engineers Council
42 and the Professional Engineers of North Carolina, appointed by the
43 General Assembly upon the recommendation of the President of the
44 Senate in accordance with G.S. 120-121.

- 1 (3) A licensed building contractor whose primary business is or was in the
2 construction of buildings, or an employee of a company holding a
3 general contractor's license, chosen from among not more than three
4 persons nominated by the Carolinas AGC (Associated General
5 Contractors), appointed by the General Assembly upon the
6 recommendation of the Speaker of the House of Representatives in
7 accordance with G.S. 120-121.
- 8 (4) A licensed electrical contractor whose primary business is or was in
9 the installation of electrical systems for buildings, chosen from among
10 not more than three persons nominated by the North Carolina
11 Association of Electrical Contractors, and the Carolinas Electrical
12 Contractors' Association, appointed by the Governor.
- 13 (5) A public member appointed by the General Assembly upon the
14 recommendation of the President of the Senate in accordance with
15 G.S. 120-121.
- 16 (6) A licensed mechanical contractor whose primary business is or was in
17 the installation of mechanical systems for buildings, chosen from
18 among not more than three persons nominated by the North Carolina
19 Association of Plumbing, Heating, Cooling Contractors, appointed by
20 the General Assembly upon the recommendation of the Speaker of the
21 House of Representatives in accordance with G.S. 120-121.
- 22 (7) An employee of the university system currently involved in the capital
23 facilities development process, chosen from among not more than
24 three persons nominated by the Board of Governors of The University
25 of North Carolina, appointed by the Governor.
- 26 (8) A public member who is knowledgeable in the building construction or
27 building maintenance area, appointed by the General Assembly upon
28 the recommendation of the President of the Senate in accordance with
29 G.S. 120-121.
- 30 (9) A manager of physical plant operations whose responsibilities are or
31 were in the operations and maintenance of physical facilities, chosen
32 from among not more than three persons nominated by the North
33 Carolina Association of Physical Plant Administrators, appointed by
34 the General Assembly upon recommendation of the Speaker of the
35 House of Representatives in accordance with G.S. 120-121.

36 The members shall be appointed for staggered three-year terms: The initial
37 appointments to the Commission shall be made within 15 days of the effective date of
38 this act. The initial terms of members appointed pursuant to subdivisions (1), (2), and
39 (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4),
40 (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed
41 pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more
42 than six consecutive years. In making new appointments or filling vacancies, the
43 Governor shall ensure that minorities and women are represented on the Commission.

1 Vacancies in appointments made by the Governor shall be filled by the Governor for
2 the remainder of the unexpired terms. Vacancies in appointments made by the General
3 Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill
4 vacancies shall qualify in the same manner as persons appointed for full terms.

5 The chairman of the Commission shall be elected by the Commission. The Secretary
6 of State shall serve as chairman until a chairman is elected."

7 Sec. 3. Chapter 143 of the General Statutes is amended by adding a new
8 section to read:

9 **"§ 143-135.7. Safety officers.**

10 Each contract for a State capital improvement project, as defined in Article 8B of this
11 Chapter, shall require the contractor to designate a responsible person as safety officer
12 to inspect the project site for unsafe health and safety hazards, to report these hazards
13 to the contractor for correction, and to provide other safety and health measures on the
14 project site as required by the terms and conditions of the contract."

15 Sec. 4. This act is effective upon ratification. Section 3 applies to contracts
16 entered into on or after the effective date of this act.

1 **SHORT TITLE: SAFETY AND HEALTH FUND**

2

3 AN ACT TO ESTABLISH A SAFETY AND HEALTH FUND TO FUND THE
4 OPERATIONS OF CERTAIN STATE SAFETY-RELATED PROGRAMS.

5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 97-100 reads as rewritten:

8 **"§ 97-100. Rates for insurance; carrier to make reports for determination of**
9 **solvency; tax upon premium; returned or canceled premiums; reports of premiums**
10 **collected; wrongful or fraudulent representation of carrier punishable as**
11 **misdemeanor; notices to carrier; employer who carries own risk shall make report**
12 **on payroll.**

13 (a) The rates charged by all carriers of insurance, including the parties to any
14 mutual insurance association writing insurance against the liability for compensation
15 under this Article, shall be fair, reasonable, and adequate.

16 (b) Each such insurance carrier shall report to the Commissioner of Insurance, in
17 accordance with such reasonable rules as the Commissioner of Insurance may at any
18 time prescribe, for the purpose of determining the solvency of the carrier and the
19 adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the
20 books and records of such insurance carrier, and examine its agents, officers, and
21 directors under oath.

22 (c) Every person, partnership, association, corporation, whether organized under the
23 laws of this or any other state or country, every mutual company or association and
24 every other insurance carrier insuring employers in this State against liability for
25 personal injuries to their employees, or death caused thereby, under the provisions of
26 this Article, shall, as hereinafter provided, pay a tax upon the premium received,
27 whether in cash or notes, in this State, or on account of business done in this State, for
28 such insurance in this State, at the rate provided in the Revenue Act then in force,
29 which tax shall be in lieu of all other taxes on such premiums, which tax shall be
30 assessed and collected as hereinafter provided; provided, however, that such insurance
31 carriers shall be credited with all canceled or returned premiums actually refunded
32 during the year on such insurance.

33 (d) Every such insurance carrier shall, for the six months ending December 31,
34 1929, and annually thereafter, make a return, verified by the affidavit of its president
35 and secretary, or other chief officers or agents, to the Commissioner of Insurance,
36 stating the amount of all such premiums and credits during the period covered by such
37 return. Every insurance carrier required to make such return shall file the same with the
38 Commissioner of Insurance on or before the first day of April after the close of the
39 period covered thereby, and shall at the same time pay to the State Insurance
40 Commissioner the tax provided in the Revenue Act then in force on such premium
41 ascertained, as provided in subsection (c) hereof, less returned premium on canceled
42 policies.

43 (e) If any such insurance carrier shall fail or refuse to make the return required by
44 this Article, the said Commissioner of Insurance shall assess the tax against such

1 insurance carrier at the rate herein provided for, on such amount of premium as he may
2 deem just, and the proceedings thereon shall be the same as if the return had been
3 made.

4 (f) If any such insurance carrier shall withdraw from business in this State before the
5 tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the
6 Commissioner of Insurance shall at once proceed to collect the same; and he is hereby
7 empowered and authorized to employ such legal process as may be necessary for that
8 purpose, and when so collected he shall pay the same into the State treasury. The suit
9 may be brought by the Commissioner of Insurance, in his official capacity, in any court
10 of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs
11 therein, and process may issue to any county of the State, and may be served as in civil
12 actions, or in case of unincorporated associations, partnerships, interindemnity
13 contracts, upon any agent of the parties thereto upon whom process may be served
14 under the laws of this State.

15 (g) Any person or persons who shall in this State act or assume to act as agent for
16 any such insurance carrier whose authority to do business in this State has been
17 suspended, while such suspension remains in force, or shall neglect or refuse to comply
18 with any of the provisions of this section obligatory upon such person or party or who
19 shall willfully make a false or fraudulent statement of the business or condition of any
20 such insurance carrier, or false or fraudulent return as herein provided, shall be deemed
21 guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less
22 than one hundred (\$100.00) nor more than one thousand dollars (\$1,000), or by
23 imprisonment for not less than 10 nor more than 90 days, or both such fine and
24 imprisonment in the discretion of the court.

25 (h) Whenever by this Article, or the terms of any policy contract, any officer is
26 required to give any notice to an insurance carrier, the same may be given by delivery,
27 or by mailing by registered letter properly addressed and stamped, to the principal
28 office or general agent of such insurance carrier within this State, or to its home office,
29 or to the secretary, general agent, or chief officer thereof in the United States, or the
30 State Insurance Commissioner.

31 (i) Any insurance carrier liable to pay a tax upon premiums under this Article shall
32 not be liable to pay any other or further tax upon such premiums, under any other law
33 of this State.

34 (j) Every employer carrying his own risk under the provisions of G.S. 97-93 shall,
35 under oath, report to the Commissioner of Insurance his payroll, subject to the
36 provisions of this Article. Such report shall be made in form prescribed by the
37 Commissioner of Insurance, and at the times herein provided for premium reports by
38 insurer. The Commissioner of Insurance shall assess against such payroll a maintenance
39 fund tax computed by taking such percent of the basic premiums charged against the
40 same or most similar industry or business taken from the manual insurance rate then in
41 force in this State as is assessed in the Revenue Act against the insurance carriers for
42 premiums collected on compensation insurance policies. The Commissioner shall use
43 the approved experience modifier of an employer in calculating the employer's
44 maintenance fund tax liability under this subsection. ~~Receipts collected under this~~

~~1 subsection shall be deposited to the credit of the State Treasurer as general fund
2 revenue.~~

3 (k) Every group of two or more employers who have pooled their liabilities pursuant
4 to G.S. 97-93 shall pay a tax upon premiums received in this State in the same manner
5 as the tax is calculated and paid by insurance carriers insuring employers in this State
6 and set forth in subsections (c), (d), (e), and (f) above.

7 (l) A special Safety and Health Fund is created in the Office of the State Treasurer
8 for the purpose of collecting revenue to be distributed for use by State agencies in the
9 enforcement of their safety and health responsibilities.

10 The funds generated by the tax on premiums collected by the Commissioner of
11 Insurance pursuant to subsections (d), (j), and (k) of this section shall be remitted to
12 the Safety and Health Fund to provide funding, at levels established by the General
13 Assembly, for the following agencies or programs:

- 14 (1) the Industrial Commission.
- 15 (2) the Department of Labor for the operation of the Occupational Safety
16 and Health program at federally-approved benchmark levels and the
17 Mine Safety and Health program.
- 18 (3) the Department of Environment, Health and Natural Resources for the
19 operation of the Occupational Health program.

20 Interest derived from the Fund shall be credited to the Fund. Fees, assessments,
21 penalties, and other sources of revenue collected by these agencies on behalf of the
22 programs specified herein shall also be deposited in the Fund unless required by law to
23 be remitted elsewhere.

24 The special Safety and Health Fund shall be subject to the provisions of the
25 Executive Budget Act. The General Assembly shall appropriate from the monies
26 available in the fund sufficient amounts to fund the programs specified herein and may
27 use the balance for any lawful purpose.

28 The premium tax monies credited to the Fund shall not be considered a special
29 purpose obligation or assessment based on premium tax, or a dedicated special purpose
30 tax based on premium tax, within the meaning of G.S. 105-228.8(e)."

31 Sec. 2. Appropriations and receipts from the General Fund to the Industrial
32 Commission, the Department of Labor and the Department of Environment, Health and
33 Natural Resources for the programs listed herein for the fiscal year 1992-93 shall be
34 reimbursed to the General Fund from the special Safety and Health Fund.

35 Sec. 3. This act becomes effective July 1, 1992.

1 SHORT TITLE: WORKERS COMP CHANGES

2

3 A BILL TO BE ENTITLED AN ACT TO REPEAL THE STATUTE OF REPOSE
4 FOR THE COLLECTION OF DEATH BENEFITS UNDER THE WORKERS
5 COMPENSATION ACT AND TO ALLOW AN ACTION AGAINST AN EMPLOYER
6 FOR REMOVAL OF MACHINERY GUARDS THAT RESULTS IN INJURY TO THE
7 EMPLOYEE.

8

9 The General Assembly of North Carolina enacts:

10 Sec. 1. G.S. 97-38 reads as rewritten:

11 "§ 97-38. Where death results proximately from compensable injury or
12 occupational disease; dependents; burial expenses; compensation to aliens; election
13 by partial dependents.

14 If death results proximately from a compensable injury or occupational ~~disease and~~
15 ~~within six years thereafter, or within two years of the final determination of disability,~~
16 ~~whichever is later,~~ disease, the employer shall pay or cause to be paid, subject to the
17 provisions of other sections of this Article, weekly payments of compensation equal to
18 sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased
19 employee at the time of the accident, but not more than the amount established
20 annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty
21 dollars (\$30.00), per week, and burial expenses not exceeding two thousand dollars
22 (\$2,000), to the person or persons entitled thereto as follows:

- 23 (1) Persons wholly dependent for support upon the earnings of the
24 deceased employee at the time of the accident shall be entitled to
25 receive the entire compensation payable share and share alike to the
26 exclusion of all other persons. If there be only one person wholly
27 dependent, then that person shall receive the entire compensation
28 payable.
- 29 (2) If there is no person wholly dependent, then any person partially
30 dependent for support upon the earnings of the deceased employee at
31 the time of the accident shall be entitled to receive a weekly payment
32 of compensation computed as hereinabove provided, but such weekly
33 payment shall be the same proportion of the weekly compensation
34 provided for a whole dependent as the amount annually contributed by
35 the deceased employee to the support of such partial dependent bears
36 to the annual earnings of the deceased at the time of the accident.
- 37 (3) If there is no person wholly dependent, and the person or all persons
38 partially dependent is or are within the classes of persons defined as
39 'next of kin' in G.S. 97-40, whether or not such persons or such
40 classes of persons are of kin to the deceased employee in equal
41 degree, and all so elect, he or they may take, share and share alike,
42 the commuted value of the amount provided for whole dependents in
43 (1) above instead of the proportional payment provided for partial
44 dependents in (2) above; provided, that the election herein provided

1 may be exercised on behalf of any infant partial dependent by a duly
2 qualified guardian; provided, further, that the Industrial Commission
3 may, in its discretion, permit a parent or person standing in loco
4 parentis to such infant to exercise such option in its behalf, the award
5 to be payable only to a duly qualified guardian except as in this
6 Article otherwise provided; and provided, further, that if such election
7 is exercised by or on behalf of more than one person, then they shall
8 take the commuted amount in equal shares.

9 When weekly payments have been made to an injured employee before his death, the
10 compensation to dependents shall begin from the date of the last of such payments.
11 Compensation payments due on account of death shall be paid for a period of 400
12 weeks from the date of the death of the employee; provided, however, after said
13 400-week period in case of a widow or widower who is unable to support herself or
14 himself because of physical or mental disability as of the date of death of the employee,
15 compensation payments shall continue during her or his lifetime or until remarriage and
16 compensation payments due a dependent child shall be continued until such child
17 reaches the age of 18.

18 Compensation payable under this Article to aliens not residents (or about to become
19 nonresidents) of the United States or Canada, shall be the same in amounts as provided
20 for residents, except that dependents in any foreign country except Canada shall be
21 limited to surviving wife and child or children, or if there be no surviving wife or child
22 or children, to the surviving father or mother whom the employee has supported, either
23 in whole or in part, for a period of one year prior to the date of the injury; provided,
24 that the Commission may, in its discretion, or, upon application of the employer or
25 insurance carrier shall commute all future installments of compensation to be paid to
26 such aliens to their present value and payment of one half of such commuted amount to
27 such aliens shall fully acquit the employer and the insurance carrier."

28 Sec. 2. G.S. 95-138 is amended by adding a new subsection to read:

29 "(c) In addition to the penalties set forth herein, employers who cause the removal of
30 safety guards from machinery covered by this Article, and an employee is injured as a
31 result of the removal, shall be liable to the employee or its legal representative for all
32 personal injury and damages suffered by the employee, its heirs, and dependents as a
33 result of the guard removal. This action shall exist notwithstanding the provisions of
34 G.S. 97-10.1, shall be supplemental to the provisions of Chapter 97 of the General
35 Statutes, and shall be subject to the provisions of G.S. 97-10.2(e), in recognition of the
36 remedial nature of this Article and the employer's accountability for the consequences
37 of the violation of safety regulations adopted under this Article."

38 Sec. 3. This act is effective upon ratification and shall apply to causes of
39 action arising on or after that date.

1 **SHORT TITLE: RETALIATORY DISCRIMINATION**

2

3 A BILL TO BE ENTITLED AN ACT TO PROTECT EMPLOYEES FROM
4 RETALIATORY DISCRIMINATION IN EMPLOYMENT FOR ENGAGING IN
5 PROTECTED ACTIVITIES.

6

7

8 The General Assembly of North Carolina enacts:

9 Sec. 1. Chapter 95 of the General Statutes is amended by adding the
10 following new Article:

11

12

"Article 21.

13

"Retaliatory Employment Discrimination

14

15 **"§ 95-240. Discrimination Prohibited.**

16 (a) No person shall discriminate or take any retaliatory action against an employee
17 because the employee does or is about to do any of the following:

18

19 (1) File a claim or complaint, initiate any inquiry, investigation,
20 inspection, proceeding or other action, or testify or provide
21 information to any person with respect to any of the following:

22

23 a. a workers compensation claim;

24

25 b. a violation of Article 2A (Wage and Hour Act) or Article 16
26 (Occupational Safety and Health Act of North Carolina) of this
27 Chapter; or

28

29 c. a violation of Article 2A of Chapter 74 of the General Statutes
30 (Mine Safety and Health Act of North Carolina).

31

32 (2) Cause any of the activities listed in subdivision (1) of this subsection to
33 be initiated on the employee's behalf.

34

35 (3) Exercise any right on behalf of the employee or any other employee
36 afforded by Article 2A or Article 16 of this Chapter or by Article 2A
37 of Chapter 74 of the General Statutes.

38

39 For purposes of this Article, 'retaliatory action' means the discharge, suspension, or
40 demotion of an employee, or other adverse employment action taken against an
41 employee in the terms and conditions of employment.

42

43 **"§ 95-241. Remedies.**

44

45 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may pursue the
46 administrative remedy provided under G.S. 95-242 or the private remedy provided
47 under G.S. 95-243.

48

49 (b) An employee that pursues the administrative remedy under G.S. 95-242 and
50 receives a determination from the Commissioner that no violation of G.S. 95-240 has
51 occurred may commence an action under G.S. 95-243 within one year of the date on
52 which the Commissioner notifies the employee of the determination.

53

"§ 95-242. Administrative remedy; Commissioner investigation and orders;

1 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may, within 180
2 days after the violation occurs, file (or have filed by any person on the employee's
3 behalf) a complaint with the Commissioner alleging the discrimination or retaliatory
4 action. The Commissioner shall immediately forward a copy of the complaint to the
5 person alleged to have violated G.S. 95-240 (who shall be referred to as the
6 respondent).

7 (b) Not later than 60 days after receipt of a complaint filed under subsection (a), the
8 Commissioner shall conduct an investigation and determine whether there is reasonable
9 cause to believe that the complaint has merit and shall notify the complainant and the
10 respondent of the findings. Where the Commissioner has concluded that there is
11 reasonable cause to believe that a violation has occurred, the Commissioner shall
12 accompany the findings with a preliminary order providing the relief prescribed by
13 subsection (d). The respondent or the complainant may, within 30 days thereafter, file
14 objections to the findings or preliminary order, or both, and request a hearing on the
15 record, except that the filing of such objections shall not operate to stay any
16 reinstatement remedy contained in the preliminary order. The hearings shall be
17 expeditiously conducted. If a hearing is not timely requested, the preliminary order is
18 deemed a final order not subject to judicial review.

19 (c) The Commissioner shall issue a final order within 120 days of the last hearing.
20 In the interim, the proceedings may be terminated at any time by written agreement of
21 the Commissioner, the complainant, and the respondent.

22 (d) If the Commissioner determines that a violation of G.S. 95-240 has occurred, the
23 Commissioner shall order the respondent to:

- 24 (1) take action to correct the violation;
25 (2) reinstate the complainant to the complainant's former position
26 together with the compensation (including backpay), terms,
27 conditions, and privileges of the complainant's employment; and
28 (3) pay the complainant compensatory damages.

29 (e) At the complainant's request, the Commissioner may assess the complainant's
30 costs and expenses (including attorney's fees) against the respondent if a final order is
31 issued providing any of the relief prescribed in subsection (d). At the respondent's
32 request, the Commissioner may assess the respondent's costs and expenses (including
33 attorney's fees) against the complainant upon a determination that the claim filed by
34 the complainant was frivolous.

35 (f) Any person adversely affected or aggrieved by a final order issued under this
36 section may obtain review of the order in the superior court of the county in which the
37 violation occurred, in which the complainant or respondent resides, or in which the
38 respondent has its principal place of business by filing a petition with the court within
39 30 days after receipt of the final order from the Commissioner. A person who fails to
40 file a petition within the required time waives the right to judicial review under this
41 section. For good cause shown, however, the superior court may accept an untimely
42 petition.

43 (g) Whenever a person has failed to comply with an order issued under this section,
44 the Commissioner shall file a civil action in the superior court of Wake County or in

1 the county in which the violation occurred in order to enforce the order. In actions
2 brought under this subsection, the superior court shall have jurisdiction to grant all
3 appropriate relief, including injunctive relief, reinstatement, back pay, and
4 compensatory damages.

5 **"§ 95-243. Private right of action.**

6 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may, within one
7 year after the violation occurs (except as provided in G.S. 95-241), commence a civil
8 action in the superior court in which the violation occurred, in which the complainant
9 resides, or in which the defendant resides or has its principal place of business.

10 (b) The plaintiff may seek and the court may award any or all of the following types
11 of relief:

- 12 (1) an injunction to enjoin continued violation of this Article.
- 13 (2) reinstatement of the employee to the same position held before the
14 retaliatory action or discrimination, or to an equivalent position.
- 15 (3) reinstatement of full fringe benefits and seniority rights.
- 16 (4) compensation for lost wages, benefits, and other remuneration,
17 including compensatory damages.
- 18 (5) punitive damages.

19 The court may award to the plaintiff and assess against the defendant the reasonable
20 costs and expenses (including attorney's fees) of the plaintiff in bringing an action
21 pursuant to this section. If the court determines that the plaintiff's action is frivolous,
22 it may award to the defendant and assess against the plaintiff the reasonable costs and
23 expenses (including attorneys fees) of the defendant in defending the action brought
24 pursuant to this section.

25 **"§ 95-244. Effect of Article on Other Rights.**

26 Nothing in this Article shall be deemed to diminish the rights or remedies of any
27 employee under any collective bargaining agreement or employment contract or at
28 common law."

29 Section 2. G.S. 95-130 reads as rewritten:

30 **"§95-130. Rights and duties of employees.** Rights and duties of employees shall
31 include but are not limited to the following provisions:

32 (1) Employees shall comply with occupational safety and health standards and all
33 rules, regulations and orders issued pursuant to this Article which are applicable to
34 their own actions and conduct.

35 (2) Employees and representatives of employees are entitled to participate in the
36 development of standards by submission of comments on proposed standards,
37 participation in hearings on proposed standards, or by requesting the development of
38 standards on a given issue under G.S. 95-131.

39 (3) Employees shall be notified by their employer of any application for a temporary
40 order granting the employer a variance from any provision of this Article or standard or
41 regulation promulgated pursuant to this Article.

42 (4) Employees shall be given the opportunity to participate in any hearing which
43 concerns an application by their employer for a variance from a standard promulgated
44 under this Article.

1 (5) Any employee who may be adversely affected by a standard or variance issued
2 pursuant to this Article may file a petition for review with the Commissioner who shall
3 review the matters set forth and alleged in the petition.

4 (6) Any employee who has been exposed or is being exposed to toxic materials or
5 harmful physical agents in concentrations or at levels in excess of that provided for by
6 any applicable standard shall have a right to file a petition for review with the
7 Commissioner who shall investigate and pass upon same.

8 (7) Subject to regulations issued pursuant to this Article any employee or authorized
9 representative of employees shall be given the right to request an inspection and to
10 consult with the Commissioner, Director, or their agents, at the time of the physical
11 inspection of any work place as provided by the inspection provision of this Article.

12 ~~(8) No employee shall be discharged or discriminated against because such
13 employee has filed any complaint or instituted or caused to be instituted any proceeding
14 or inspection under or related to this Article or has testified or is about to testify in any
15 such proceeding or because of the exercise by such employee on behalf of himself or
16 others of any right afforded by this Article."~~

17 ~~(9) Any employee who believes that he has been discharged or otherwise
18 discriminated against by any person in violation of (8) hereinafter mentioned may,
19 within 30 days after such violation occurs, file a complaint with the Commissioner
20 alleging such discrimination. Upon receipt of such complaint, the Commissioner shall
21 cause such investigation to be made as he deems appropriate. If the Commissioner
22 determines that the provisions of the above subdivision have been violated, he shall
23 bring an action against such person in the superior court division of the General Court
24 of Justice in the county wherein the discharge or discrimination occurred. In any such
25 action the superior court shall have jurisdiction, for cause shown to restrain violations
26 of subdivision (8) of this section and order all appropriate relief including rehiring or
27 reinstatement of the employee to his former position with back pay.~~

28 ~~(10) Within 90 days of the receipt of a complaint filed under subdivision (9) above
29 the Commissioner shall notify the complainant of his determination.~~

30 (11) Any employee or representative of employees who believes that any period of
31 time fixed in the citation given to his employer for correction of a violation is
32 unreasonable has the right to contest such time for correction by filing a written and
33 signed notice within 20 days from the date the citation is posted within the
34 establishment.

35 (12) Nothing in this or any other provision of this Article shall be deemed to
36 authorize or require medical examination, immunization, or treatment for those who
37 object thereto on religious grounds, except where such is necessary for the protection of
38 the health or safety of others."

39 Sec. 3. G.S. 95-25.20 reads as rewritten:

40 "§ 95-25.20. Complainants protected. Records. ~~(a) No employer shall discharge or
41 in any manner discriminate against any employee because the employee files a
42 complaint or participates in any investigation or proceeding under this Article. Any
43 employee who believes that he has been discharged or otherwise discriminated against
44 in violation of this section may, within 60 days after such violation occurs, file a~~

~~1 complaint with the Commissioner alleging such discrimination. If the Commissioner
2 determines that the provisions of this section have been violated, he shall bring an
3 action against the employer in the superior court division of the General Court of
4 Justice in the county wherein the discharge or discrimination occurred. In any such
5 action, the superior court shall have jurisdiction, for cause shown, to restrain violations
6 of this section and order all appropriate relief, including rehiring or reinstatement of
7 the employee to his former position with back pay.~~

~~8 (b) Files and other records relating to investigations and enforcement proceedings
9 pursuant to this Article, or pursuant to Article 21 of this Chapter with respect to Wage
10 and Hour Act violations, shall not be subject to inspection and examination as
11 authorized by G.S. 132-6 while such investigations and proceedings are pending."~~

12 Sec. 4. G.S. 97-6.1 is repealed.

13 Sec. 5. G.S. 74-24.15 reads as rewritten:

14 "§ 74-24.15. Rights and duties of miners.(a) Miners shall comply with all safety and
15 health standards and all rules, regulations, or orders issued pursuant to this Article
16 which are applicable to their own actions and ~~conduct.~~ conduct and shall have the
17 rights afforded under Article 21 of Chapter 95 of the General Statutes.

18 ~~(b) No person shall discharge or in any other way discriminate against or cause to be
19 discharged or discriminated against any miner or any authorized representative of
20 miners by reason of the fact that such miner or representative (i) has notified the
21 Commissioner of any alleged violation or danger, (ii) has filed, instituted, or caused to
22 be filed or instituted any proceeding under this Article, or (iii) has testified or is about
23 to testify in any proceeding resulting from the administration or enforcement of the
24 provisions of this Article.~~

25 ~~(c) Any miner or a representative of miners who believes that he has been discharged
26 or otherwise discriminated against by any person in violation of this section may, within
27 30 days after such violation occurs, apply to the Commissioner for a review of such
28 alleged discharge or discrimination. A copy of the application shall be sent to such
29 person who shall be the respondent. Upon receipt of such application, the
30 Commissioner shall cause such investigation to be made as he deems appropriate. Upon
31 receiving the report of such investigation, the Commissioner shall make findings of fact.
32 If he finds that such violation did occur, he shall issue a decision, incorporating an
33 order therein, requiring the person committing such violation to take such affirmative
34 action to abate the violation as the Commissioner deems appropriate, including, but not
35 limited to, the rehiring or reinstatement of the miner or representative of miners to his
36 former position with back pay. If he finds that there was no such violation, he shall
37 issue an order denying the application. Such order shall incorporate the Commissioner's
38 findings therein. An order issued by the Commissioner under this subsection is subject
39 to administrative and judicial review in accordance with Chapter 150B of the General
40 Statutes. Enforcement of a final order or decision issued under this subsection shall be
41 subject to the provisions of G.S. 74-24.12.~~

42 ~~(d) Whenever an order is issued under this section at the request of the applicant, a
43 sum equal to the aggregate amount of all costs and expenses (including attorney's fees)
44 as determined by the Commissioner to have been reasonably incurred by the applicant~~

1 ~~for, or in connection with, the institution and prosecution of such proceedings, shall be~~
2 ~~assessed against the person committing such violation."~~

3 Sec. 6. G.S. 126-86 reads as rewritten:

4 "**§ 126-86. Civil actions for injunctive relief or other remedies.** Any State employee
5 injured by a violation of G.S. 126-85 may maintain an action in superior court for
6 damages, an injunction, or other remedies provided in this Article against the person or
7 agency who committed the violation within one year after the occurrence of the alleged
8 violation of this ~~Article.~~ Article; provided, however, any claim arising under Article 21
9 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of
10 that Article only and may be redressed only by the remedies and relief available under
11 that Article."

12 Sec. 7. This act becomes effective October 1, 1992 and applies to violations
13 occurring on or after that date.

1 **SHORT TITLE: SAFETY PROGRAMS AND COMMITTEES**

2

3 AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND
4 HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE
5 WORKPLACE:

6

7 The General Assembly of North Carolina enacts:

8 Sec. 1. Chapter 95 of the General Statutes is amended by adding a new
9 Article to read as follows:

10

11

12 "Article 22.

13 "Employee Safety and Health

14

15

16 "Part I.

17 "Safety and Health Programs

18

19 "§ 95-250. Safety and Health Programs.

20

21 (a) Establishment of Program.--Each employer with an experience rate modifier
22 of 1.5 or greater shall, in accordance with this Part, establish and carry out a safety and
23 health program to reduce or eliminate hazards and to prevent injuries and illnesses to
24 employees.

25

26 (b) Modifications to safety and health programs.--The Commissioner may
27 modify the application of the requirements of this section to classes of employers where
28 the Commissioner determines that, in light of the nature of the risks faced by the
29 employees of such employers, such a modification would not reduce the employees'
30 safety and health protection.

31

32 "§ 95-251. Safety and Health Program Requirements.

33

34 A safety and health program established and carried out under this Part shall be a
35 written program that shall include:

36

37 (1) methods and procedures for identifying, evaluating, and documenting
38 safety and health hazards;

39

40 (2) methods and procedures for correcting the safety and health hazards
41 identified under subdivision (1);

42

43 (3) methods and procedures for investigating work-related fatalities,
injuries and illnesses;

44

(4) methods and procedures for providing occupational safety and health
services, including emergency response and first aid procedures;

45

(5) methods and procedures for employee participation in the
implementation of the safety and health program, including
participation through any safety and health committee established
under Part II of this Article;

46

(6) methods and procedures for responding to the recommendations of the
safety and health committee, where applicable;

47

- 1 (7) methods and procedures for providing safety and health training and
2 education to employees and to members of any safety and health
3 committee established under Part II of this Article;
4 (8) the designation of a representative of the employer who has the
5 qualifications and responsibility to identify safety and health hazards
6 and the authority to initiate corrective action where appropriate;
7 (9) in the case of a worksite where employees of two or more employers
8 work, procedures for each employer to protect employees at the
9 worksite from hazards under the employer's control, including
10 procedures to provide information on safety and health hazards to
11 other employers and employees at the worksite; and
12 (10) such other provisions as the Commissioner requires to effectuate the
13 purposes of this Part.

14 **"§ 95-252. Safety and health program rules; compensation.**

15 (a) Not later than 1 year after the effective date of this Article, the Commissioner
16 shall adopt final rules concerning the establishment and implementation of employer
17 safety and health programs under this Part. Rules adopted under this Part shall include
18 provisions for the training and education of employees and safety and health committee
19 members. These rules shall:

- 20 (1) provide for the training and education of employees, including safety
21 and health committee members, in a manner that is readily
22 understandable by such employees, concerning safety and health
23 hazards, control measures, the employer's safety and health program,
24 employee rights and applicable laws and regulations;
25 (2) provide for the training and education of the safety and health
26 committee concerning methods and procedures for hazard recognition
27 and control, the conduct of worksite safety and health inspections, the
28 rights of the safety and health committee, and concerning other
29 information necessary to enable such members to carry out the
30 activities of the committee under Part II of this Article;
31 (3) require that training and education be provided to employees at the
32 time of employment and to safety and health committee members at
33 the time of selection; and
34 (4) require that refresher training be provided on at least an annual basis
35 and that additional training be provided to employees and to safety
36 and health committee members when there are changes in conditions
37 or operations that may expose employees to new or different safety or
38 health hazards or when there are changes in safety and health rules or
39 standards under Article 16 of this Chapter that apply to the employer.

40 (b) No loss of pay.--The time during which employees are participating in
41 training and education activities under this subsection shall be considered as hours
42 worked for purposes of wages, benefits, and other terms and conditions of employment.
43 The training and education shall be provided by an employer at no cost to the
44 employees of the employer."

"PART II
"Safety and Health Committees
and Employee Safety and Health Representatives.

"§ 95-260. Safety and Health Committees Required.

(a) Each employer subject to the provisions of this Part shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section. An employer is subject to this Part if it has 11 or more employees and an experience rate modifier of 1.5 or greater.

(b) Safety and Health Committees.--

(1) In general.--Each employer covered by this Part shall establish a safety and health committee at each worksite of the employer, except as provided herein:

- a. An employer covered by this Part whose employees do not primarily report to or work at a fixed location is required to have only one safety and health committee to represent all employees.
- b. A safety and health committee is not required at a covered employee's worksite with less than 11 employees.
- c. The Commissioner may, by rule, modify the application of this subdivision to worksites where employees of more than one employer are employed.

Each employer required to establish a safety and health committee under this Part shall, pursuant to rules adopted by the Commissioner, enable the committee to exercise the rights described in this Part.

(2) Membership.--Each safety and health committee shall consist of:

- a. the employee safety and health representatives elected or appointed under G.S. 95-261; and
- b. as determined appropriate by the employer, employer representatives, the number of which may not exceed the number of employee representatives.

(3) Chairpersons.--Each safety and health committee shall be cochaired by:

- a. a representative selected by the employer; and
- b. a representative selected by the employee members of the committee.

(4) Rights.--Each safety and health committee may, within reasonable limits and in a reasonable manner:

- a. review any safety and health program established by the employer under Part I of this Article;
- b. review incidents involving work-related fatalities, injuries and illnesses and complaints regarding safety or health hazards by employees;
- c. review, upon the request of the committee or upon the request of the employer representatives or employee representatives of the committee, the employer's work injury and illness records, other than

1 personally identifiable medical information, and other reports or
2 documents relating to occupational safety and health;

3 d. conduct inspections of the worksite at least once every 3 months and
4 in response to complaints regarding safety or health hazards by
5 employees or committee members;

6 e. conduct interviews with employees in conjunction with inspections of
7 the worksite;

8 f. conduct meetings, at least once every 3 months, and maintain written
9 minutes of such meetings;

10 g. observe the measurement of employee exposure to toxic materials and
11 harmful physical agents;

12 h. establish procedures for exercising the rights of the committee;

13 i. make recommendations on behalf of the committee, and in making
14 recommendations, permit any members of the committee to submit
15 separate views to the employer for improvements in the employer's
16 safety and health program and for the correction of hazards to
17 employee safety or health, except that recommendations shall be
18 advisory only and the employer shall retain full authority to manage
19 the worksite; and

20 j. accompany the Commissioner or the Commissioner's representative
21 during any physical inspection of the worksite.

22 (5) Time for committee activities.--The employer shall permit members of the
23 committee established under this Part to take the time from work reasonably necessary
24 to exercise the rights of the committee without suffering any loss of pay or benefits for
25 time spent on duties of the committee.

26 (6) Rules.--Not later than 1 year after the effective date of this Article, the
27 Commissioner shall adopt final rules for the establishment and operation of safety and
28 health committees pursuant to this Part. The rules shall include provisions concerning:

29 a. the establishment of such committees by an employer whose
30 employees do not primarily report to or work at a fixed location;

31 b. the establishment of committees at worksites where employees of more
32 than one employer are employed; and

33 c. the employer's obligation to enable the committee to function properly
34 and effectively, including the provision of facilities and materials
35 necessary for the committee to conduct its activities, and the
36 maintenance of records and minutes developed by the committee.

37 **"§ 95-261. Employee Safety and Health Representatives.**

38 (a) In general.--Safety and health committees established under this Part shall
39 include:

40 (1) one employee safety and health representative where the average
41 number of nonmanagerial employees of the employer at the worksite
42 during the year ending January 1 was more than 10, but less than 50;

- 1 (2) two employee safety and health representatives where the average
2 number of nonmanagerial employees of the employer at the worksite
3 during the year ending January 1 was more than 50, but less than 100;
4 (3) an additional employee safety and health representative for each
5 additional 100 such employees at the worksite, up to a maximum of
6 six employee safety and health representatives; and
7 (4) where an employer's employees do not primarily report to or work at
8 a fixed location or at worksites where employees of more than one
9 employer are employed, a number of employee safety and health
10 representatives as determined by the Commissioner by rule.

11 (b) Selection.--Employee safety and health representatives shall be selected by and
12 from among the employer's nonmanagerial employees, as follows:

13 (1) Where none of the employer's employees at a worksite are represented by
14 an exclusive bargaining representative, the employees shall elect employee safety and
15 health representatives in an election held in conformity with procedures pursuant to
16 rules adopted by the Commissioner.

17 (2) Where the employer's employees are represented by a single exclusive
18 bargaining representative, the bargaining representative shall designate the employee
19 safety and health representatives.

20 (3) Where the employer's employees are represented by more than one exclusive
21 representative or where some but not all of the employees are represented by an
22 exclusive representative, each bargaining unit of represented employees (and any
23 residual group of unrepresented employees) shall have a proportionate number of
24 employee safety and health representatives based on the number of employees in each
25 bargaining unit or group, except that each such unit or group of 11 or more employees
26 shall have at least one representative. The selection process shall be conducted in
27 accordance with the provisions of subdivisions (1) or (2) as applicable.

28 (4) Rules.--Not later than 1 year after the effective date of this Article, the
29 Commissioner shall adopt rules concerning safety and health representatives. Such
30 rules shall include provisions concerning:

- 31 a. the number of employee safety and health representatives where an
32 employer's employees do not primarily report to work at a fixed
33 location;
34 b. the number of employee safety and health representatives at worksites
35 where employees of more than one employer are employed; and
36 c. the selection and election procedures for employee safety and health
37 representatives, such election procedures to provide for a fair election
38 by secret ballot and protect employee's equal rights to participate in
39 the election without being subject to penalty, discipline, improper
40 interference or reprisal.

41 "§ 95-262. Additional Rights.

42 The rights and remedies provided to employees and employee safety and health
43 representatives by this section are in addition to, and not in lieu of, any other rights

1 and remedies provided by contract, by other provisions of this Act or by other
2 applicable law, and are not intended to alter or affect such rights and remedies.

3 "§ 95-263. Definitions.

4 The following definitions shall apply to this Article:

5 (1) 'Experience rate modifier' means the numerical modification applied to an
6 experience rating for use in determining workers compensation premiums.

7 (2) 'Worksite' means a single physical location where business is conducted or where
8 operations are performed by employees of an employer.

9 The definitions of Article 16 of this Chapter shall also apply to this Article.

10 "§ 95-264. Reports.

11 Upon the final adoption of all rules required to be adopted by the Commissioner
12 under this Article, the Commissioner shall determine, based on information provided by
13 the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5
14 of greater and shall notify these employers of the applicability of Part I of this Article
15 and the potential applicability of Part II of this Article.

16 Within 60 days of notification by the Commissioner, the employer shall certify on
17 forms provided by the Commissioner that it meets the requirements of Part I of this
18 Article and, if applicable, the requirements of Part II of this Article.

19 The Commissioner shall notify an employer when its experience rate modifier falls
20 below 1.5. An employer subject to the provisions of Part II of this Article shall notify
21 the Commissioner if it no longer employs 11 or more employees and has discontinued
22 or will discontinue its safety and health committee.

23 "§ 95-265. Penalties.

24 The Commissioner may levy a civil penalty, not to exceed the amounts listed herein,
25 for a violation of Parts I or II of this Article:

26 <u>Employers with 10 or less employees</u>	<u>\$ 2,000</u>
27 <u>Employers with 11-50 employees</u>	<u>\$ 5,000</u>
28 <u>Employers with 50-100 employees</u>	<u>\$10,000</u>
29 <u>Employers with more than 100 employees</u>	<u>\$25,000</u>

30 The Commissioner, in determining the amount of the penalty, shall consider the
31 nature of the violation, whether it is first or subsequent violation, and the steps taken
32 by the employer to remedy the violation upon discovering the violation."

33 Sec. 2. This act is effective upon ratification and applies on the date of
34 adoption of final rules by the Commissioner of Labor.

1 SHORT TITLE: URGE SHARING OF INFORMATION

2

3 A JOINT RESOLUTION URGING THE CONGRESS OF THE UNITED
4 STATES TO REQUIRE FEDERAL AGENCIES RESPONSIBLE FOR INSPECTING
5 WORK PLACES TO SHARE INFORMATION WITH STATE AGENCIES
6 RESPONSIBLE FOR THE ENFORCEMENT OF STATE AND FEDERAL
7 OCCUPATIONAL SAFETY AND HEALTH LAWS.

8

9 Whereas, on September 3, 1991, 25 workers died and 55 were injured in a
10 fire at the Imperial Foods processing plant in Hamlet, North Carolina; and

11 Whereas, a primary factor in the deaths and injuries of those workers was
12 their inability to escape from the plant because exit doors nearest to where the fire
13 broke out were locked and no exit signs were posted in the plant to direct workers in
14 the event of an emergency; and

15 Whereas, on the morning that the fire occurred, an inspector from the
16 United States Department of Agriculture (USDA) was in the Imperial Foods plant and
17 was aware that at least one exit door was locked; and

18 Whereas, the exit door that the USDA inspector knew was locked was one of
19 the doors that plant workers tried in vain to escape through; and

20 Whereas, in response to the Imperial fire, the USDA Food Safety Inspection
21 Service (FSIS) has required that an emergency evacuation plan for FSIS personnel be in
22 place in every plant inspected by the FSIS; and

23 Whereas, in response to the Imperial fire, the USDA and the United States
24 Department of Labor, OSHA Division, are jointly considering training of FSIS
25 inspectors to enable them to identify specific safety and health hazards, and are also
26 considering an arrangement whereby FSIS inspectors may report serious uncorrected
27 hazards directly to OSHA; and

28 Whereas, certain federal agency personnel inspect work places with greater
29 frequency than other agency personnel and thus are in a position to identify recurring
30 hazardous conditions; and

31 Whereas, it is an efficient and effective use of existing resources to maximize
32 the ability of every federal work place inspector to identify obvious hazardous
33 conditions, even if the inspector has no authority to order correction of such conditions,
34 and to inform appropriate federal or State agency officials to ensure that the conditions
35 are corrected as quickly as possible; and

36 Whereas, the absence of reasonable cross-training of inspectors may foster
37 circumstances where the method for correcting one violation of a safety and health law
38 directly causes the violation of another safety and health law, as was the case in the
39 Imperial plant; and

40 Whereas, many of the deaths and injuries that occurred at the Imperial plant
41 may have been prevented had the USDA inspector known that the door that was locked
42 to prevent fly infestation was a fire exit and should not have been locked; Now,
43 therefore, be it resolved by the House of Representatives, the Senate concurring:

1 Sec. 1. The General Assembly urges the members of Congress of the
2 United States to mandate that all federal agencies charged with the enforcement of
3 safety and health laws ensure that appropriate agency personnel are able and authorized
4 to identify hazardous conditions in the work places they inspect and to inform
5 appropriate federal and State agency officials of violations of safety and health laws the
6 inspectors observe during the course of their regular inspections.

7 Sec. 2. The Secretary of State shall transmit copies of this resolution to the
8 members of Congress of the United States from North Carolina and to the Clerk of the
9 United States House of Representatives and the Secretary of the United States Senate.

10 Sec. 3. This resolution is effective upon ratification.

1 **SHORT TITLE: OSHA INSPECTOR FUNDS**

2

3 AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF LABOR FOR
4 THE EMPLOYMENT OF SAFETY AND HEALTH INSPECTORS AND RELATED
5 SUPPORT STAFF.

6

7 The General Assembly of North Carolina enacts:

8 Sec. 1. There is appropriated from the General Fund to the Department of
9 Labor the sum of four million two hundred twenty-five thousand one hundred sixty four
10 dollars (\$4, 225,164) for the 1992-93 fiscal year for the employment of 80 safety and
11 health inspectors and related support to meet federal OSHA benchmarks for the North
12 Carolina Occupational Safety and Health program.

13 Sec. 2. This act becomes effective July 1, 1992.

1 **SHORT TITLE: NCSU WASTE FACILITY FUNDS**

2

3 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS FOR THE
4 CONSTRUCTION OF A HAZARDOUS WASTE FACILITY AT NORTH CAROLINA
5 STATE UNVIERSITY.

6

7 The General Assembly of North Carolina enacts:

8 Sec. 1. There is appropriated from the General Fund to the Board of
9 Governors of the University of North Carolina the sum of two million seven hundred
10 eighty-four thousand dollars (\$2,784,000) for the 1992-93 fiscal year for the
11 construction of a facility at North Carolina State University. The facility to be
12 constructed with these funds shall be for the storage and disposal of hazardous wastes
13 and shall include space for offices, laboratories, and warehouse and low temperature
14 storage.

15 Sec. 2. This act becomes effective July 1, 1992.

GENERAL RECOMMENDATIONS

RECOMMENDATION: In appropriating funds to the Department of Labor for the employment of OSHA inspectors, the General Assembly should consider appropriating these funds from the special Safety and Health Fund, should that Fund be established by the General Assembly, or from the General Fund, or a proportion of the funds from each available source.

RECOMMENDATION: From funds available to the Department of Labor, the General Assembly should provide for the printing and distribution of postage-paid postcards to be affixed to OSHA posters that are posted in employers' businesses so that employees may report in writing to the Department of Labor any violations of OSHA laws and regulations.

SUMMARY OF PROPOSED LEGISLATION

AN ACT TO CLARIFY THE THE ENFORCEMENT OF THE BUILDING CODE BY A MUNICIPALITY IN ITS EXTRATERRITORIAL JURISDICTION AND TO PROVIDE FOR APPOINTMENTS OF MINORITIES AND WOMEN TO THE BUILDING CODE COUNCIL.

Section 1 of this bill clarifies that a municipality may enforce the State Building Code (which includes the fire code and the life safety provisions) within its extraterritorial jurisdiction area.

Section 2 increases the membership of the State Building Code Council from 13 to 15 members by adding 2 new local government representatives. One of the new members will be a city manager or municipal elected official. The other will be a county manager or county commissioner. This section also requires the Governor, in making new appointments or filling vacancies, to ensure that minorities and women are represented on the Council.

AN ACT TO REQUIRE EMPLOYERS TO REPORT AT LEAST ANNUALLY ON FATALITIES AND SERIOUS INJURIES IN THE WORKPLACE, TO REQUIRE THE REPORTING OF CERTAIN SAFETY DATA TO THE COMMISSIONER OF LABOR BY VARIOUS AGENCIES, AND TO ENSURE, WHERE APPROPRIATE, THE CONFIDENTIALITY OF DATA RELEASED TO THE COMMISSIONER.

Section 1. Under current law, employers are required to maintain accurate records of and to make periodic reports on work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. This bill changes the requirement from "periodic" to "at least annually".

Sections 2 and 3 amend the statutes pertaining to the records kept by the Industrial Commission. Section 2 permits the Department of Labor and other State and federal agencies to have access to Commission records, requires the Commission to provide from its records specified information about employers who have had workers' compensation claims filed against them, and provides that information provided to State and federal agencies shall be exempt from public inspection to the same extent that Commission records are exempt. Section 3 is a change that conforms to those made in Section 2.

Section 4 requires the North Carolina Rate Bureau to provide to the Department of Labor information from the Bureau's records, which information includes the name of each employer and that employer's experience modification rating established by the Bureau for setting premium rates for workers' compensation insurance. The information provided by the Bureau is exempted from public inspection, and the Bureau is made immune from civil liability for providing erroneous information to the Department, so long as the Bureau acted in good faith in providing the information.

Section 5 requires the Commissioner of Insurance to provide the Department of Labor, on an annual basis, the name and business address of every employer whose workers' compensation coverage is provided through the assigned-risk pool. Such information is made exempt from public inspection.

Section 6 requires local medical examiners to provide certain information to the Chief Medical Examiner when the death that the medical examiner is investigating occurred in the course of the decedent's employment. In such cases the medical examiner shall include in the information provided to the Chief Medical Examiner, the address or location where the death occurred, and the name of the decedent's employer. Within 30 days of receipt of this information, the Chief Medical Examiner shall forward to the Commissioner of Labor the cause and manner of death, the address or location where the death occurred, and the name of the decedent's employer.

AN ACT TO PERMIT THE COMMISSIONER OF LABOR TO IMPOSE PENALTIES AGAINST PUBLIC AGENCIES FOR OSHA VIOLATIONS.

This legislation removes the prohibition against the levy of civil and criminal penalties against State and local agencies for OSHA violations. With the prohibition removed, the Commissioner of Labor can levy fines and penalties against State and local agencies to the same extent he is authorized to levy them against private businesses.

AN ACT TO ESTABLISH A WORKPLACE REQUIREMENTS PROGRAM FOR THE SAFETY AND HEALTH OF ALL STATE EMPLOYEES

This legislation codifies an existing program within State government that is administered by the Office of State Personnel. The existing program establishes health and safety requirements for State employees' workplaces and was originally created by Executive Order in 1985.

Section 1 requires all State agencies to establish written safety programs that will address such issues as hazard identification and communication in the workplace, accident investigation, safety training, and enforcement of safety rules and practices. Safety and health committees will be required in each State agency to perform workplace inspections, advise management on safety issues, and perform related duties. All State employees are covered, regardless of whether they are under the State Personnel Act.

The Office of State Personnel will assist agencies in developing their own workplace safety and health programs. The State Personnel Commission will report to the Joint Legislative Commission on Governmental Operations any agencies that fail to comply. State agencies will also remain subject to OSHA laws and their enforcement by the Commissioner of Labor pursuant to G.S. 95-148. Whether these agencies can be fined depends on the outcome of another piece of legislation in this package.

Section 2 makes a conforming change in the State Personnel Act to vest overall responsibility for the development of the program in the State Personnel Commission.

AN ACT TO ESTABLISH AN INTER-AGENCY TASK FORCE TO STUDY THE REORGANIZATION OF STATE AGENCIES INVOLVED WITH OCCUPATIONAL SAFETY AND HEALTH AND FIRE SAFETY RESPONSIBILITIES AND TO REPORT TO THE LRC COMMITTEE ON FIRE AND OCCUPATIONAL SAFETY AT INDUSTRIAL AND COMMERCIAL FACILITIES BY OCTOBER 1, 1992.

This legislation creates a task force to study how the organizational structure of the State's fire safety and occupational health and safety functions can be reorganized to be more efficient and responsive to the needs of employers and employees. Agencies with responsibility over fire safety and/or occupational safety are represented on the Task Force. Two local officials will also be appointed. The Task Force will make its recommendations to the LRC Committee on Fire and Occupational Safety at Industrial and Commercial Facilities by October 1, 1992.

AN ACT TO CREATE A SPECIAL EMPHASIS INSPECTION PROGRAM TO TARGET OSHA INSPECTIONS.

The purpose of this legislation is to authorize the Department of Labor to target for more frequent OSHA inspections those employers who have a high frequency of violations or work-related injuries.

Section 1:

Subsection (a) defines a special emphasis inspection as one that is scheduled randomly and more frequently than general schedule inspection, and is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

Subsection (b) establishes those who will be targeted for special emphasis inspections as employers who: have a high rate of serious or willful violations; have a high rate of work-related deaths or serious illnesses or injuries during a one-year period; are engaged in a type of industry determined to be a high risk for serious or fatal work-related injuries or illnesses; or have an experience modification rating that is significantly higher than the State average. The Department must use the most current data available, must ensure that every targeted employer is inspected at least once within the two year period following targeting; and must update its targeting inspection records annually.

Subsection (c) requires the Department to notify employers about the special emphasis program at least 30 days prior to its implementation.

Subsection (d) requires the Department to report to Governmental Operations on the impact of the special emphasis program.

Section 2 instructs the Department to begin developing the program immediately upon ratification, and to implement the program not later than July 1, 1993.

AN ACT TO REQUIRE STATE CONSTRUCTION SITE SAFETY STUDY AND THE DESIGNATION OF SAFETY OFFICERS ON STATE CONSTRUCTION SITES, AND TO REQUIRE MINORITY AND WOMEN REPRESENTATION ON THE STATE BUILDING COMMISSION.

Section 1 of this legislation authorizes the State Building Commission to study ways to make State construction project sites safer for construction employees.

Section 2 requires the Governor, in making new appointments to or filling vacancies on the State Building Commission, to ensure that minorities and women are represented.

Section 3 codifies an existing clause in many State construction contracts that requires contractors to designate safety officers for each project.

AN ACT TO ESTABLISH A SAFETY AND HEALTH FUND TO FUND THE OPERATIONS OF CERTAIN STATE SAFETY-RELATED PROGRAMS.

This legislation will shift workers compensation premium tax revenues from the General Fund into a special Safety and Health Fund. The Safety and Health Fund will be used to finance the operations of the Industrial Commission, the Mine Safety and Health and Occupational Safety and Health programs of the Department of Labor, and the Occupational Health program of the Department of Environment, Health, and Natural Resources.

The bill does not identify the percentage of funds each agency would receive. The decision on funding levels would be made by the General Assembly in the appropriations process. The General Assembly is not restricted to using these funds exclusively for these agencies; nor is it prohibited from using additional funds outside this special Fund for these programs.

AN ACT TO REPEAL THE STATUTE OF REPOSE FOR THE COLLECTION OF DEATH BENEFITS UNDER THE WORKERS COMPENSATION ACT AND TO ALLOW AN ACTION AGAINST AN EMPLOYER FOR REMOVAL OF MACHINERY GUARDS THAT RESULTS IN INJURY TO THE EMPLOYEE.

Section 1 of this legislation removes the statute of repose for the collection of death benefits under the Workers Compensation Act.

Under current law, the dependents and heirs of an employee who suffers a work-related injury or disability and dies as a result thereof can recover death benefits under the Workers Compensation Act only if the death occurs within 6 years after the injury or disease or within 2 years after the final determination of disability, whichever is later. This bill eliminates these 6-year and 2-year time limitations and allows recovery of death benefits regardless of when the death occurs. The death still must result from the injury or disability.

Section 2 amends the OSHA civil penalties statute to provide that if an employee is injured or killed because of a machine guard that his employer removed or caused to be removed, the employee (or estate) can sue the employer for damages. Under current law, the employee's only recourse is to seek benefits under the Workers Compensation Act or to file suit alleging that the employer intentionally removed or caused the removal of the guard and knew with substantial certainty that it would cause serious injury or death (Woodson v. Rowland).

AN ACT TO PROTECT EMPLOYEES FROM RETALIATORY DISCRIMINATION IN EMPLOYMENT FOR ENGAGING IN PROTECTED ACTIVITIES.

This legislation creates a new retaliatory discrimination law. The new law provides protection for employees who file workers compensation claims, OSHA complaints, mine safety complaints, and wage and hour complaints. The protection also extends to activities such as testifying or providing information concerning these claims and complaints.

The new law gives employees a choice between an administrative remedy and a private cause of action. The administrative remedy involves filing a complaint with the Commissioner of Labor, who then investigates to determine whether the employee has been unlawfully discriminated against. The Commissioner may order temporary relief, including reinstatement of the employee. Parties have the right to hearings before the Commissioner and to appeals. If the complaint is determined to be frivolous, the employer's defense costs may be assessed against the employee.

The private remedy allows employees to seek relief for retaliatory discrimination in court, regardless of whether the employee has gone through the administrative process. The court may award as relief injunctions, reinstatement, compensatory damages for back-pay and other lost compensation, restoration of seniority rights and other fringe benefits, punitive damages, and costs (including attorneys fees). The court can also assess the employee with the employer's defense costs if the action is found to be frivolous.

Sections 2, 3, 4, and 5 repeal the existing retaliatory discrimination laws under the Wage and Hour Act, OSHA, the Mine Safety and Health Act, and the Workers Compensation Act. They are repealed because they will be covered under the new law retaliatory discrimination law created by this legislation.

Section 6 makes a conforming amendment to the existing whistle-blower law for State employees. The amendment provides that activities protected under both the new retaliatory discrimination law and the whistle-blower law will be prosecuted under the new law rather than under the whistle-blower law.

Section 7 states that this law takes effect October 1, 1992 and applies to violations that occur on or after that date.

AN ACT TO REQUIRE CERTAIN EMPLOYERS TO ESTABLISH SAFETY AND HEALTH PROGRAMS AND SAFETY AND HEALTH COMMITTEES IN THE WORKPLACE.

This legislation requires certain employers to establish safety and health committees and safety and health programs.

Part I of the legislation requires employers with an experience rate modifier of 1.5 or more to establish a safety program to reduce workplace safety hazards and prevent injuries. An experience rate modifier is a numerical factor that reflects the recent loss experience of an employer with respect to workers compensation claims.

The requirements of the safety program are outlined in G.S. 95-251 and include methods for identifying and correcting hazards, for providing emergency response, for investigating work accidents, and for training employees. The Commissioner of Labor is responsible, under G.S. 95-252, for adopting the rules governing the safety programs. The final rules must be in place within 1 year after the ratification of this bill. Under G.S. 95-252(b), employees must be paid for time spent on safety training and safety education.

Part II of this legislation requires employers with 11 or more employees and an experience rate modifier of 1.5 or more to create safety and health committees with both employer and employee representatives. A multi-plant employer must have a committee at each plant except that the Commissioner of Labor has authority, under G.S. 95-260(b)(1)b. to modify this requirement for those plants or sites with fewer than 11 employees.

Each safety committee will have employee representatives selected either by the employees or by the employees' union(s). The number of employee representatives varies from 1 to 6 depending on the number of nonmanagerial employees on the payroll. Employer representatives are selected by the employer; the number of employer representatives cannot exceed the number of employee representatives. The Committees are authorized to review the safety programs, review work-related accidents and accident records, conduct interviews, make recommendations concerning safety, and conduct inspections of the worksite at least once every 3 months (or more frequently in response to employee complaints). The employer must pay the safety committee members for time spent on safety committee business.

The Commissioner of Labor is responsible for enforcing this law. Using information from the Rate Bureau, the Commissioner will notify employers with an experience rate modifier of 1.5 or more that they are covered by the safety program requirement and are additionally subject to the safety committee requirement if they have 11 or more employees. Employers who fail to comply with these laws are subject to fines that are scheduled according to employer size.

A JOINT RESOLUTION URGING CONGRESS OF THE UNITED STATES TO REQUIRE FEDERAL AGENCIES RESPONSIBLE FOR INSPECTING WORK PLACES TO SHARE INFORMATION WITH STATE AGENCIES RESPONSIBLE FOR THE ENFORCEMENT OF STATE AND FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAWS.

The purpose of this resolution is make Congress aware of the importance of cooperation between all federal and State agencies charged with the enforcement of safety and health laws, and to urge that federal agencies be required to share information its personnel obtains from work place inspections.

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF LABOR FOR THE EMPLOYMENT OF SAFETY AND HEALTH INSPECTORS AND RELATED SUPPORT STAFF.

This bill appropriates \$4,225,164 to the Department of Labor for the employment of sufficient health and safety inspectors in the Department of Labor to meet federal benchmark levels for the North Carolina Occupational Safety and Health program.

AN ACT TO APPROPRIATE FUNDS FOR THE CONSTRUCTION OF A HAZARDOUS WASTE FACILITY AT NORTH CAROLINA STATE UNIVERSITY.

This bill appropriates \$2,784,000 to the Board of Governors for the construction of a hazardous waste facility at North Carolina State University to replace the current facility. Replacement of this facility is needed because the facility currently in use was not built for the purpose of dealing with hazardous waste, is inadequate for that purpose and does not allow for maximum safe handling of hazardous waste materials, and construction of a new facility would be more economically efficient than renovating the current one.

APPENDIX A

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

.....

APPENDIX B

Appendix B contains the original working draft of the Committee. Please refer to pages 8-1 through 8-47 of this report for the legislation recommended by the Committee and a summary of the legislation.

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



April 6, 1992

MEMORANDUM

TO: Members of the Legislative Committee on Fire and Occupational Safety and Commercial and Industrial Facilities

FROM: Linwood Jones, Commission Counsel
Gann Watson, Commission Counsel

RE: Draft Legislation

The attached draft (FOS-1) contains legislation implementing proposals presented to this Committee. Nearly 75 proposals have been presented to the Committee since December. Based on instructions at the March meeting, the staff eliminated proposals that duplicated other proposals, merged similar proposals, and eliminated proposals which the sponsors indicated were not priorities for the 1992 short session. We will be glad to prepare at the request of the Committee or a member of the Committee any additional legislation that does not appear in this draft for consideration at the final meeting in late April.

This draft should be considered a working document. The release of this draft marks the first time many of these proposals have actually been fully developed into a bill.

The bill is organized by subject matter under the following headings: Fire and Building Safety, Information Access, State Agencies and Employees, Inspections, Penalties, Safety Programs for State Contracts & State Funds, Workers Compensation, Safety Committees and Employee Discrimination, Statute of Repose, Resolution, Appropriations, and Effective Date.

Prior to each section within the bill is a summary of the section. The following table indicates for each section the page on which the section begins and what the section does. Please refer to the summaries in the bill and the bill text itself for more detailed information.

Fire and Occupational Safety Committee
April 6, 1992

<u>Section</u>	<u>Page</u>	<u>Description</u>
1	1	<i>Increases penalties for violation of Building Code, including fire code provisions</i>
2	2	<i>Clarifies city's authority to enforce Building Code (including fire code) in ETJ territory</i>
3	3	<i>Adds 2 local government representatives to the Building Code Council</i>
4	4	<i>Clarifies authority of city to levy civil penalties against fire code violators</i>
4.1	4	<i>Clarifies authority of county to levy civil penalties against fire code violators</i>
5	4	<i>Requires sharing of State agency safety records</i>
6	6	<i>Require annual reports on fatalities and serious injuries</i>
7	6	<i>Requires Industrial Commission to share data</i>
8	7	<i>Maintains privacy of Industrial Commission's records</i>
9	7	<i>Requires Rate Bureau to share data</i>
10	8	<i>Requires county medical examiner and Chief Medical Examiner to report to Labor Dep't.</i>
11	9	<i>Allows OSHA fines to be levied against government agencies</i>
12	10	<i>Codifies and strengthens State Employees Workplace Requirements Program for Safety and Health</i>
12.1	12	<i>Conforming amendment</i>
13	12	<i>Creates task force to study and report to Committee on reorganization of safety and health responsibilities</i>
14	13	<i>Broadens consultative services program to include incentive inspections for at-risk employers</i>
15	14	<i>Creates special emphasis inspection program for high-risk employers</i>
15.1	15	<i>Operational dates for special emphasis program</i>
16	15	<i>Earmarks OSHA penalties for training funds</i>
17	16	<i>Creates property liens for unpaid OSHA fines</i>

Fire and Occupational Safety Committee
April 6, 1992

18	17	<i>Limits discretion of OSHA Review Board in reducing violations and penalties</i>
19	17	<i>Requires safety programs & committees for employers contracting with State or receiving certain monies or benefits from State</i>
19.1	19	<i>Conforming amendment relating to D.O.T.</i>
20	21	<i>State Building Commission to look at ways to improve construction safety</i>
20.1	22	<i>Requires contractors to have safety officers</i>
21	23	<i>Earmarks workers compensation premium taxes for State safety programs</i>
22	26	<i>Removes limit on death occurring within certain time after injury for purposes of dependents obtaining workers comp benefits</i>
23	27	<i>Requires workers comp carriers to provide safety consultations with insureds</i>
24	30	<i>Creates new retaliatory discrimination law, requires employers to have safety programs, and requires employers with 11 or more employees to have safety committees</i>
24.1	39	<i>Repeals OSHA retaliatory discrimination law</i>
24.2	40	<i>Repeals Wage and Hour Act retaliatory discrimination law</i>
24.3	41	<i>Repeals workers compensation retaliatory discrimination law</i>
24.4	41	<i>Repeals Mine Safety and Health Act retaliatory discrimination law</i>
24.5	41	<i>Conforming amendment to State employees whistle-blower law</i>
25	42	<i>Lengthens products liability statute of repose from 6 to 25 years</i>
26	44	<i>Resolution asking Congress to mandate federal agencies to share safety information</i>
26.1	45	<i>Same as 26.</i>
26.2	45	<i>Same as 26.</i>
26.3	45	<i>Same as 26.</i>

Fire and Occupational Safety Committee
April 6, 1992

<i>27</i>	<i>45</i>	<i>Funds for safety and health inspectors</i>
<i>27.1</i>	<i>46</i>	<i>Funds for fire safety specialists</i>
<i>27.2</i>	<i>46</i>	<i>Funds for ECU safety institute</i>
<i>27.3</i>	<i>46</i>	<i>Funds for OSHA pre-paid postcards</i>
<i>28</i>	<i>46</i>	<i>Effective dates</i>

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

D

FOS-1
THIS IS A DRAFT 6-APR-92 09:29:29

Short Title: Employee Safety and Health

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES IN THE LAW TO IMPROVE
3 WORKPLACE SAFETY AND HEALTH CONDITIONS AND TO ENHANCE
4 ENFORCEMENT OF OCCUPATIONAL SAFETY AND HEALTH LAWS.
5 The General Assembly of North Carolina enacts:

FIRE AND BUILDING SAFETY

SECTION 1 increases the penalties for violations of the State Building Code (including the fire prevention code provisions of the Building Code) and sets out the penalty schedule for violations of the life safety provisions. The penalty for a Building Code violation increases from \$50 to \$500. The penalties for violations of the life safety provisions are stiffer and increase with subsequent offenses.

6 Sec. 1. G.S. 143-138(h) reads as rewritten:
7 "(h) Violations. -- Any person who shall be adjudged to have violated this Article or
8 the North Carolina State Building Code, except for violations of occupancy limits or
9 life safety provisions established by either, shall be guilty of a misdemeanor and shall
10 upon conviction be liable to a fine, not to exceed ~~fifty dollars (\$50.00)~~, five hundred
11 dollars (\$500.00), for each offense. ~~Each 30 days that such violation continues shall~~
12 ~~constitute a separate and distinct offense.~~ Violation of occupancy limits established
13 pursuant to the North Carolina State Building Code shall be a misdemeanor subject to a
14 one hundred dollar (\$100.00) fine for a first offense, a two hundred fifty dollar
15 (\$250.00) fine for a second offense, and a five hundred dollar (\$500.00) fine and up to
16 30 days imprisonment for a third and any subsequent offenses. Violations of life safety

1 provisions established pursuant to the North Carolina State Building Code shall be a
2 misdemeanor subject to a one thousand dollar (\$1,000) fine for a first offense, a two
3 thousand dollar (\$2,000) fine for a second offense, and a five thousand dollar (\$5,000)
4 fine and up to thirty (30) days imprisonment for a third and any subsequent offenses.
5 Any violation incurred more than one year after another conviction for violation of the
6 occupancy limits or life safety provisions shall be treated as a first offense for purposes
7 of establishing and imposing penalties. In case any building or structure is erected,
8 constructed or reconstructed, or its purpose altered, so that it becomes in violation of
9 the North Carolina State Building Code or if the occupancy limits or life safety
10 provisions established pursuant to the North Carolina State Building Code are exceeded
11 or violated, either the local enforcement officer or the State Commissioner of Insurance
12 or other State official with responsibility under G.S. 143-139 may, in addition to other
13 remedies, institute any appropriate action or proceedings including the civil remedies
14 set out in G.S. 160A-175 and G.S. 153A-123, (i) to prevent such unlawful erection,
15 construction or reconstruction or alteration of purpose, or overcrowding, (ii) to restrain,
16 correct, or abate such violation, or (iii) to prevent the occupancy or use of said
17 building, structure or land until such violation is ~~corrected~~, corrected, or for violations
18 of the Fire Prevention Code provisions of the North Carolina State Building Code."

SECTION 2 provides that a municipality's jurisdiction for purposes of enforcing the Building Code includes its extraterritorial jurisdiction. This clarifies that the municipality enforces the State Building Code and the statewide fire code adopted by the Building Code Council in the area in which the municipality exercises its extraterritorial jurisdiction.

19 Sec. 2. G.S. 143-138(e) reads as rewritten:
20 " (e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply
21 throughout the State, from the time of its adoption. However, any political subdivision
22 of the State may adopt a building code or building rules and regulations governing
23 construction or a fire prevention code within its jurisdiction. The territorial jurisdiction
24 of any municipality or county for this purpose, unless otherwise specified by the
25 General Assembly, shall be as follows: Municipal jurisdiction shall include all areas
26 within the corporate limits of the municipality; municipality and extraterritorial
27 jurisdiction areas established as provided in G.S. 160A-360 or a local act; county
28 jurisdiction shall include all other areas of the county. No such code or regulations,
29 other than those permitted by G.S. 160A-436, shall be effective until they have been
30 officially approved by the Building Code Council as providing adequate minimum
31 standards to preserve and protect health and safety, in accordance with the provisions of
32 subsection (c) above. While it remains effective, such approval shall be taken as
33 conclusive evidence that a local code or local regulations supersede the State Building
34 Code in its particular political subdivision. Whenever the Building Code Council
35 adopts an amendment to the State Building Code, it shall consider any previously
36 approved local regulations dealing with the same general matters, and it shall have

1 authority to withdraw its approval of any such local code or regulations unless the local
2 governing body makes such appropriate amendments to that local code or regulations as
3 it may direct. In the absence of approval by the Building Code Council, or in the
4 event that approval is withdrawn, local codes and regulations shall have no force and
5 effect. Provided any local regulations approved by the local governing body which are
6 found by the Council to be more stringent than the adopted statewide fire prevention
7 code and which are found to regulate only activities and conditions in buildings,
8 structures, and premises that pose dangers of fire, explosion or related hazards, and are
9 not matters in conflict with the State Building Code, shall be approved."

SECTION 3 adds two members to the Building Code Council, one of whom will be a municipal elected official or city manager and the other of whom will be a county commissioner or county manager. All members of the Building Code Council are appointed by the Governor.

10 Sec. 3. G.S. 143-136(a) reads as rewritten:

11 "(a) Creation; Membership; Terms. -- There is hereby created a Building Code
12 Council, which shall be composed of ~~13~~ 15 members appointed by the Governor,
13 consisting of one registered architect, one licensed general contractor, one registered
14 architect or licensed general contractor specializing in residential design or
15 construction, one registered engineer practicing structural engineering, one registered
16 engineer practicing mechanical engineering, one registered engineer practicing electrical
17 engineering, one licensed plumbing and heating contractor, one municipal or county
18 building inspector, one licensed liquid petroleum gas dealer/contractor involved in the
19 design of natural and liquid petroleum gas systems who has expertise and experience in
20 natural and liquid petroleum gas piping, venting and appliances, a representative of the
21 public who is not a member of the building construction industry, a licensed electrical
22 contractor, a registered engineer on the engineering staff of a State agency charged
23 with approval of plans of State-owned buildings, a municipal elected official or city
24 manager, a county commissioner or county manager, and an active member of the
25 North Carolina fire service with expertise in fire safety. Of the members initially
26 appointed by the Governor, three shall serve for terms of two years each, three shall
27 serve for terms of four years each, and three shall serve for terms of six years each.
28 Thereafter, all appointments shall be for terms of six years. The Governor may remove
29 appointive members at any time. Neither the architect nor any of the above named
30 engineers shall be engaged in the manufacture, promotion or sale of any building
31 material, and any member who shall, during his term, cease to meet the qualifications
32 for original appointment (through ceasing to be a practicing member of the profession
33 indicated or otherwise) shall thereby forfeit his membership on the Council.

34 The Governor may make appointments to fill the unexpired portions of any terms
35 vacated by reason of death, resignation, or removal from office. In making such
36 appointment, he shall preserve the composition of the Council required above."

SECTION 4 clarifies that a city may levy a civil penalty against a person who violates the statewide fire prevention code. This clarification is also made in the Building Code statutes in Section 1 of this bill. Section 4.1 makes the identical change for counties.

1 Sec. 4. G.S. 160A-175(c) reads as rewritten:

2 "(c) An ordinance may provide that violation shall subject the offender to a civil
3 penalty to be recovered by the city in a civil action in the nature of debt if the offender
4 does not pay the penalty within a prescribed period of time after he has been cited for
5 violation of the ~~ordinance.~~ ordinance or the statewide fire prevention code authorized
6 by G.S. 143-138."

7

8 Sec. 4.1. G.S. 153A-123(c) reads as rewritten:

9 "(c) An ordinance may provide that violation subjects the offender to a civil penalty
10 to be recovered by the county in a civil action in the nature of debt if the offender does
11 not pay the penalty within a prescribed period of time after he has been cited for
12 violation of the ~~ordinance.~~ ordinance or the statewide fire prevention code authorized
13 by G.S. 143-138."

INFORMATION ACCESS

SECTION 5 requires State agencies that keep records related to workplace safety and health practices, workers' compensation premium rates, and workers' compensation claims filed, to share certain information from those records, while maintaining as much as possible the privacy interests in those records.

14 Section 5. Article 16 of Chapter 95 of the General Statutes is amended by
15 adding a new section to read:

16 "§ 95-144.1. Access to information from other State agencies.

17 (a) As used in this section, the phrase 'State agency' includes State departments,
18 divisions, boards, commissions. or other State entities. The purpose of this section is to
19 further the enforcement of occupational safety and health laws through the sharing of
20 certain information among State agencies. Except for the particular information
21 authorized to be provided under this section, nothing in this section shall be construed
22 to make public those State agency records that are exempt from Chapter 132 or that are
23 otherwise deemed not to be open for public inspection.

24 (b) Notwithstanding any other provision of law to the contrary, and within the
25 limitations set forth in this section, any State agency that has, pursuant to its statutory
26 responsibilities, records concerning:

27 (1) an employer's compliance with the requirements of this Article, or
28 (2) an employer's workplace safety and health practices or conditions, or
29 (3) an employer's experience modification rating established for the
30 purpose of setting premium rates for workers' compensation insurance
31 coverage, or,

1 (4) claims filed under Chapter 97 of the General Statutes, the North
2 Carolina Worker’s Compensation Act, based upon accidents, fatalities,
3 or serious injuries or illnesses that occurred at the job-site or at the
4 workplace or that were directly or indirectly caused by hazardous
5 conditions at the workplace or at the job-site,
6 shall, in a timely manner and upon the written request of the Department or other State
7 agency charged with the enforcement of health and safety laws, provide the requesting
8 State agency with information authorized to be provided from its records under this
9 section. Information that may be requested and provided under this section is limited
10 to the name, address, and type of business of those employers about whom the State
11 agency has the records described in subdivisions (1) through (4) of this subsection. A
12 State agency providing information authorized under this section shall not permit the
13 requesting State agency to have any other information in the providing State agency’s
14 records unless such records are public documents under Chapter 132 of the General
15 Statutes, or except as otherwise authorized under State law.”

SECTION 6 requires the Commissioner of Labor to require that employers make reports on work-related deaths and serious injuries at least annually; under current law, the Commissioner requires these reports periodically.

16 Sec. 6. G.S. 95-143 reads as rewritten:

17 **"§ 95-143. Record keeping and reporting.**

18 (a) Each employer shall make available to the Commissioner, or his agents, in such
19 manner as the Commissioner shall require, copies of the same records and reports
20 regarding his activities relating to this Article as are required to be made, kept, or
21 preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970
22 (P.L. 91-596) and regulations made pursuant thereto.

23 (b) Each employer shall make, keep and preserve and make available to the
24 Commissioner such records regarding his activities relating to this Article as the
25 Commissioner may prescribe by regulation as necessary and appropriate for the
26 enforcement of this Article or for developing information regarding the causes and
27 prevention of occupational accidents and illnesses. In order to carry out the provisions
28 of this section such regulations may include provisions requiring employers to conduct
29 periodic inspections. The Commissioner shall also issue regulations requiring that
30 employers, through posting of notices or other appropriate means, keep the employees
31 informed of their protections and obligations under this Article, including the provisions
32 of applicable standards. The Commissioner shall prescribe regulations requiring
33 employers to maintain accurate records of, and to make ~~periodic~~ reports at least
34 annually on, work-related deaths, injuries and illnesses other than minor injuries
35 requiring only first-aid treatment and which do not involve medical treatment, loss of
36 consciousness, restriction of work or motion, or transfer to another job.

1 (c) The Commissioner shall issue regulations requiring employers to maintain
2 accurate records of employee exposure to potentially toxic materials of [or] harmful
3 physical agents which are required to be monitored or measured under this Article.
4 Such regulations shall provide employees or their representatives with an opportunity to
5 observe such monitoring or measuring, and to have access to the records thereof. Such
6 regulations shall also make appropriate provisions for each employee or former
7 employee to have access to such records as will indicate his own exposure to toxic
8 materials or harmful physical agents. Each employer shall promptly notify any
9 employee who has been or is being exposed to toxic materials or harmful physical
10 agents in concentrations or at levels which exceed those prescribed by an applicable
11 safety and health standard promulgated under this Article and shall inform any
12 employee who is being thus exposed of the corrective action being taken.

13 (d) Any information obtained by the Commissioner or his duly authorized agents
14 under this Article shall be obtained with a minimum burden upon employers, especially
15 those operating small businesses. Unnecessary duplication of efforts in obtaining
16 information shall be reduced to the maximum extent feasible."

SECTION 7 requires the Industrial Commission to share certain information in its records with State and federal agencies charged with enforcement of safety and health laws. Subsection (e) requires the Commission to provide to such State or federal agencies the name and address of those employers who have had workers' compensation claims filed against them when such claims were based on accidents, fatalities, or serious illnesses or injuries that occurred in the work place or that were directly or indirectly caused by hazardous workplace conditions.

17 Sec. 7. G.S. 97-81 reads as rewritten:
18 "§ 97-81. Blank forms and literature; statistics; safety provisions; accident reports;
19 studies and investigations and recommendations to General Assembly; to cooperate
20 with other agencies for prevention of injury.

21 (a) The Commission shall prepare and cause to be printed, and upon request furnish,
22 free of charge to any employee or employer, such blank forms and literature as it shall
23 deem requisite to facilitate or prompt the efficient administration of this Article.

24 (b) The Commission shall tabulate the accident reports received from employers in
25 accordance with G.S. 97-92 and shall publish the same in the annual report of the
26 Commission and as often as it may deem advisable, in such detailed or aggregate form
27 as it may deem best. The name of the employer or employee shall not appear in such
28 publications, and and, except as otherwise provided in this section, the employers'
29 reports shall be private records of the Commission, and shall not be open for public
30 inspection except for the inspection of the parties directly involved, and only to the
31 extent of such interest. These reports shall not be used as evidence against any
32 employer in any suit at law brought by any employee for the recovery of damages.

33 (c) The Commission shall make studies and investigations with respect to safety
34 provisions and the causes of injuries in employments covered by this Article, and shall

1 from time to time make to the General Assembly and to employers and carriers such
2 recommendations as it may deem proper as to the best means of preventing such
3 injuries.

4 (d) In making such studies and investigations the Commission ~~is authorized~~ shall:

5 (1) ~~To~~ cooperate with any agency of the United States charged with the
6 duty of enforcing any law securing safety against injury in any
7 employment covered by this Article, or with any State agency engaged
8 in enforcing any laws to assure safety for employees, and

9 (2) ~~To~~ permit any such agency to have access to the records of the
10 Commission.

11 In carrying out the provisions of this section the Commission or any officer or
12 employee of the Commission is authorized to enter at any reasonable time upon any
13 premises, tracks, wharf, dock, or other landing place, or to enter any building, where
14 an employment covered by this Article is being carried on, and to examine any tool,
15 appliance, or machinery used in such employment.

16 (e) The Commission shall, upon written request, provide to any State or federal
17 agency responsible for the enforcement of workplace safety and health laws, the name
18 and address of employers who have had workers' compensation claims filed against
19 them based on accidents, fatalities, or serious injuries or illnesses that occurred at the
20 workplace or at the job-site or that were directly or indirectly caused by hazardous
21 conditions at the workplace or at the job-site."

SECTION 8 maintains the Industrial Commission's records as private documents except for certain information authorized to be released to certain State and federal agencies (see Section 7).

22 Sec. 8. G.S. 97-92(b) reads as rewritten:

23 "(b) The Except as provided in G.S. 97-81 pertaining to State and federal agency
24 access to information, the records of the Commission, insofar as they refer to accidents,
25 injuries, and settlements shall not be open to the public, but only to the parties
26 satisfying the Commission of their interest in such records and the right to inspect
27 them."

SECTION 9 requires the North Carolina Rate Bureau to share with certain State or federal agencies the names of employers whose experience modification rating exceeds by one-half point or more the average experience modification rating for workers' compensation premium rates.

28 Sec. 9. Chapter 58 of the General Statutes is amended by adding a new
29 section to read:

30 "§ 58-36-15.1. Bureau to share information with certain State agencies.

1 The Bureau shall, upon written request from a State or federal agency charged with
2 enforcement of workplace safety and health laws, provide the agency with the name of
3 every employer whose experience modification rating exceeds by one-half point or more
4 the average experience modification rating for workers' compensation insurance
5 premium rates."

SECTION 10 requires the county medical examiner and Chief Medical Examiner to report certain information concerning job-related fatalities to the Department of Labor.

6 Sec. 10. G.S. 130A-385(a) reads as rewritten:

7 "(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall
8 take charge of the body, make inquiries regarding the cause and manner of death,
9 reduce the findings to writing and promptly make a full report to the Chief Medical
10 Examiner on forms prescribed for that purpose. In cases where the death occurred in
11 the course of the decedent's employment, the medical examiner shall include in the
12 information provided to the Chief Medical Examiner the address or location where the
13 death occurred and the name of the deceased person's employer. Within 30 days of
14 receipt of this information from the medical examiner, the Chief Medical Examiner
15 shall forward to the Commissioner of Labor the cause and manner of death, the address
16 or location where the death occurred, and the name of the deceased person's employer.

17 The Chief Medical Examiner or the county medical examiner is authorized to inspect
18 and copy the medical records of the decedent whose death is under investigation. In
19 addition, in an investigation conducted pursuant to this Article, the Chief Medical
20 Examiner or the county medical examiner is authorized to inspect all physical evidence
21 and documents which may be relevant to determining the cause and manner of death of
22 the person whose death is under investigation, including decedent's personal
23 possessions associated with the death, clothing, weapons, tissue and blood samples,
24 cultures, medical equipment, X rays and other medical images. The Chief Medical
25 Examiner or county medical examiner is further authorized to seek an administrative
26 search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties
27 imposed under this Article. In addition to the requirements of G.S. 15-27.2, no
28 administrative search warrant shall be issued pursuant to this section unless the Chief
29 Medical Examiner or county medical examiner submits an affidavit from the office of
30 the district attorney in the district in which death occurred stating that the death in
31 question is not under criminal investigation.

32 The Chief Medical Examiner shall provide directions as to the nature, character and
33 extent of an investigation and appropriate forms for the required reports. The facilities
34 of the central and district offices and their staff services shall be available to the medical
35 examiners and designated pathologists in their investigations."

36
37
38

STATE AGENCIES AND EMPLOYEES

SECTION 11 authorizes the Commissioner of Labor to impose OSHA penalties against State and local governments.

Sec. 11. G.S. 95-148 reads as rewritten:

"§ 95-148. Safety and health programs of State agencies and local governments.

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

- (1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article;
- (2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- (3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions;
- (4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action;
- (5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section;
- (6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, he shall, after unsuccessfully seeking by negotiations to abate such failure, include this in his annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct such condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

~~The Commissioner will not impose civil or criminal penalties against any State agency or political subdivision for violations described and covered by this Article.~~

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

1 This section shall not apply to volunteer fire departments not a part of any
 2 municipality.
 3 Any municipality with a population of 10,000 or less may exclude its fire department
 4 from the operation of this section by a resolution of the governing body of the
 5 municipality, except that the resolution may not exclude those firefighters who are
 6 employees of the municipality.
 7 The North Carolina Fire and Rescue Commission shall recommend regulations and
 8 standards for fire departments."

SECTION 12 codifies the existing State Employees Workplace Requirements Program for Safety and Health. The program was originally created pursuant to a 1985 Executive Order. The program is currently administered by the Office of State Personnel and will continue to be administered by that agency under the provisions of this section. With the assistance of the Office of State Personnel, all State agencies must adopt workplace safety programs and policies that address issues such as accident investigation, hazard communication, hazard identification, and other safety and health program elements outlined below. Agencies not in compliance will be reported to the General Assembly.

Section 12 also requires the creation of safety and health committees with both managerial and nonmanagerial employees and the development of safety and health programs. Section 12.1 makes a conforming change in the State Personnel Act with respect to the State Personnel Commission's powers and duties.

9 Sec. 12. Chapter 143 of the General Statutes is amended by adding a new
 10 Article to read:

11
 12 **"Article 63**
 13 **"State Employees Workplace Requirements Program**
 14 **for Safety and Health**

15
 16 **"§ 143-580. Program goals.**

17 Each State agency shall establish a written program for State employee workplace
 18 safety and health. The program shall promote safe and healthful working conditions
 19 and shall be based on clearly stated goals and objectives for meeting the goals. The
 20 program shall provide managers, supervisors, and employees with a clear and firm
 21 understanding of the State's concern for protecting employees from job-related injuries
 22 and health impairment; preventing accidents and fires; planning for emergencies and
 23 emergency medical procedures; identifying and controlling physical, chemical and
 24 biological hazards in the workplace; communicating potential hazards to employees;
 25 and assuring adequate housekeeping and sanitation.

26
 27 **"§ 143-581. Program Requirements.**

28 The written program required under this Article shall describe, at a minimum:

- 29 (1) the methods to be used to identify, analyze and control new or
 30 existing hazards, conditions and operations;

- 1 (2) how managers, supervisors and employees are responsible for
2 implementing the program, controlling accident-related expenditures
3 and how continued participation of management and employees will
4 be established, measured and maintained;
- 5 (3) how the plan will be communicated to all affected employees so that
6 they are informed of work-related physical, chemical or biological
7 hazards and controls necessary to prevent injury or illness;
- 8 (4) how managers, supervisors, and employees will receive training in
9 avoidance of job-related injuries and health impairment;
- 10 (5) how workplace accidents will be reported and investigated and how
11 corrective actions will be implemented;
- 12 (6) how safe work practices and rules will be communicated and enforced;
- 13 (7) the safety and health training program that will be made available to
14 employees;
- 15 (8) how employees can make complaints concerning safety and health
16 problems without fear or retaliation; and
- 17 (9) how employees will receive medical attention following a work-related
18 injury or illness.

19
20 **"§ 143-582. Model Program; technical assistance; reports; definitions.**

21 **(a) The State Personnel Commission, through the Office of State Personnel, shall:**

- 22 (1) maintain a model program of safety and health requirements to guide
23 State agencies in the development of their individual programs and in
24 complying with the provisions of G.S. 95-148 and this Article; and
- 25 (2) establish guidelines for the creation and operation of State agency
26 safety and health committees.

27 **(b) The Office of State Personnel shall:**

- 28 (1) provide consultative and technical services to assist State agencies in
29 establishing and administering their workplace safety and health
30 programs and to address specific technical problems; and
- 31 (2) monitor compliance with this Article.

32 **(c) The State Personnel Commission shall report annually to the Joint Legislative**
33 **Commission on Governmental Operations on the safety and health activities of State**
34 **agencies, compliance with this Article, and the fines levied against State agencies**
35 **pursuant to Article 16 of Chapter 95 of the General Statutes.**

36 **(d) For purposes of this Article, 'State agency' means any department, commission,**
37 **division, board, or institution of the State."**

38
39 **"§ 143-583. State agency safety and health committees. Each State agency shall**
40 **create, pursuant to guidelines adopted under subsection (a) of G.S. 143-582, safety and**
41 **health committees to perform workplace inspections, review injury and illness records,**
42 **make advisory recommendations to the agency's managers, and perform other functions**
43 **determined by the State Personnel Commission to be necessary for the effective**

1 implementation of the State Employees Workplace Requirements Program for Safety
2 and Health."

3 Sec. 12.1. G.S. 126-4(10) reads as rewritten:

4 " (10) Programs of ~~safety, health,~~ employee assistance, productivity
5 incentives, and equal opportunity opportunity; programs of safety and
6 health as contained in Article 63 of Chapter 143 of the General
7 Statutes; and such other programs and procedures as may be necessary
8 to promote efficiency of administration and provide for a fair and
9 modern system of personnel administration. This subdivision may not
10 be construed to authorize the establishment of an incentive pay
11 program."

SECTION 13 establishes an inter-agency task force of State and local officials to develop a plan of reorganization of the various governmental functions, duties, and responsibilities relating to fire safety and occupational health and safety. The task force will report back to the Committee by October 1, 1992 with a reorganizational plan that addresses the issues described below. This will give the Committee an opportunity to review the plan and to recommend necessary legislative changes to the 1993 session of the General Assembly.

12 Sec. 13. There is hereby established the Inter-agency Task Force on State
13 Agency Oversight of Workplace Safety and Health. The Task Force shall study the
14 regulatory responsibilities of State and local governmental agencies involved with
15 workplace safety and health. The members shall include a representative of each of the
16 following:

- 17 (a) The Commissioner of Labor or a designee, who shall also chair the
18 Task Force;
19 (b) The Commissioner of Insurance or a designee;
20 (c) The Secretary of the Department of Environment, Health, and Natural
21 Resources or a designee;
22 (d) The Chairman of the Industrial Commission or a designee;
23 (e) The Chairman of the Public Utilities Commission or a designee;
24 (f) The Secretary of the Department of Transportation or a designee;
25 (g) A community college representative appointed by the President of the
26 North Carolina System of Community Colleges; and
27 (h) Two local officials, one selected by the North Carolina League of
28 Municipalities and the other selected by the North Carolina
29 Association of County Commissioners.

30 The Task Force shall submit a written report to the LRC Study Committee on Fire
31 and Occupational Safety at Commercial and Industrial Facilities no later than October
32 1, 1992. The report shall recommend a proposed reorganization of the occupational
33 health and safety and fire safety network within State and local government to better
34 address the needs of employers and employees in this State.

1 The proposed reorganization should accomplish the following goals:

- 2 (a) Be as consolidated and coordinated as possible with clear areas of
3 responsibility and clear lines of authority;
- 4 (b) Be devoid of duplication;
- 5 (c) Be devoid of political or special interest influence;
- 6 (d) Be able to respond quickly, efficiently and effectively to reports of
7 unsafe conditions and to emergencies;
- 8 (e) Clarify the role of local government in fire and safety protection in the
9 workplaces in their jurisdictions;
- 10 (f) Fully utilize the community colleges in training inspectors and offering
11 programs for safety committees and businesses that seek to improve
12 worker safety;
- 13 (g) Consider contracting with local fire agencies for inspections before
14 adding more people to the state payroll;
- 15 (h) Develop an educational component that will include the creation and
16 distribution of educational materials regarding workplace safety laws
17 and duties of employers and rights of workers, including brochures,
18 fliers, posters, public service spots for radio and television, newspaper
19 and magazine articles; and
- 20 (i) Include proposals for establishing supplementary inspection programs
21 in addition to those authorized under the Occupational Safety and
22 Health Act.

23 The Department of Labor shall provide clerical and professional assistance to
24 the Task Force.

INSPECTIONS

SECTION 14 expands the role of the existing consultative services bureau within the Occupational Safety and Health Division of the Department of Labor. The existing bureau provides consultation services to an employer upon the employer's request. This section statutorily codifies the bureau and expands its activities to include "safety audits" of "at-risk" workplaces. The Commissioner of Labor would rely primarily upon workers compensation data to identify "at-risk" employers. The Commissioner would request "at-risk" employers to submit to a voluntary, nonpunitive inspection. If the employer refused, the inspection would not take place; however, the employer would suffer a 10% surcharge on its workers compensation premium for the following two years.

25 Sec. 14. G.S. 95-133 is amended by adding the following new subsection:

26 "(a1) The Consultative Services Bureau is hereby established within the
27 Occupational Safety and Health Division of the North Carolina Department of Labor.
28 The Bureau shall, within available resources, provide consultative services to any
29 employer upon request and may perform health and safety audits of 'at-risk' employers
30 in accordance with procedures adopted by the Commissioner.

31 For the purposes of this subsection, 'at-risk employer' means any employer that
32 meets one or more of the following criteria:

- 1 (1) The experience rate modifier used in calculating the employer's
2 workers compensation premium is 1.5 or greater;
3 (2) The employer's workers compensation coverage is provided through
4 the assigned-risk pool pursuant to G.S. 58-36-1;
5 (3) The employer's loss experience on workers compensation claims
6 demonstrates a pattern of workplace accidents or illnesses;
7 (4) The employer's workplace is located within a territory in which the
8 Commissioner of Insurance has determined, based upon fire protection
9 classifications or other acceptable evidence, that there exists a
10 potentially inadequate response time or capacity for fire or other
11 serious workplace accidents.
12 Consultative services and safety audits shall be provided independently of
13 enforcement activities under this Article. Safety audits shall be conducted under the
14 applicable rules and procedures governing consultative services generally, provided that
15 an employer that refuses the Commissioner or the Commissioner's representatives
16 entry, for purposes of performing a safety audit, onto or into its workplace or any
17 portion thereof shall be assessed a ten percent surcharge on its workers compensation
18 premiums for the ensuing two premium years in accordance with rules adopted by the
19 Commissioner of Insurance."

SECTION 15 establishes a special emphasis inspection program in the Department of Labor. A special emphasis inspection is one that is done more frequently than a general schedule inspection because the employer has a high frequency of violations or a high risk or high rate of work related fatalities, or serious injuries or illnesses. The Department of Labor is required to use current data, to update data annually, and to notify employers of the implementation date of the program. The section also requires that employers included in the special emphasis pool be inspected within 2 years of identification of that employer.

20 Sec. 15. Article 16 of Chapter 95 of the General Statutes is amended by
21 adding a new section to read:

22 "§ 95-136.1. Special emphasis inspection program.

- 23 (a) As used in this section, a 'special emphasis inspection' is
24 an inspection by the Department's occupational safety and health division that is:
25 (1) scheduled randomly and more frequently than a general schedule
26 inspection, and
27 (2) scheduled because of an employer's high frequency of violations of
28 safety and health laws or because of an employer's high risk or high
29 rate of work-related fatalities or work-related serious injuries or
30 illnesses.
31 (b) The Department shall develop and implement a special emphasis inspection
32 program that targets for special emphasis inspection employers who:
33 (1) have a high rate of serious or willful violations of any standard, rule,
34 order, or other requirement under this Article, or of regulations

1 prescribed pursuant to the Federal Occupational Safety and Health Act
2 of 1970, in a one year period, or

3 (2) have a high rate of work-related deaths, or a high rate of work-related
4 serious injuries or illnesses, in a one year period, or

5 (3) are engaged in a type of industry determined by the Department to be
6 at high risk for serious or fatal work-related injuries or illnesses, or

7 (4) have an experience modification rating established for workers'
8 compensation premium rates that exceeds by one-half point or more
9 the average experience modification rating for workers' compensation
10 premium rates.

11 To identify employers for special emphasis inspections, the Department shall use the
12 most current data available from its own data base and from other sources, including
13 State departments, divisions, boards, commissions and other State entities. The
14 Department shall ensure that every employer targeted for special emphasis inspection is
15 inspected at least one time within the two year period following targeting of the
16 employer by the Department. The Department shall update its special emphasis
17 inspection records at least annually.

18 (c) The Director shall make information about the special emphasis inspection
19 program available to all employers in the State at least 30 days prior to the date of
20 implementation of the program.

21 (d) The Department shall, two years after the initial implementation of the special
22 emphasis inspection program, and annually thereafter, report to the Joint Legislative
23 Commission on Governmental Operations and the Fiscal Research Division the impact
24 that the special emphasis inspection program is having on safety and health compliance
25 and enforcement."

26 Sec. 15.1. The Department shall begin the development of the special
27 emphasis inspection program immediately upon ratification of this act. The special
28 emphasis inspection program shall become operational not later than July 1, 1993.

PENALTIES

SECTION 16 requires that proceeds from civil penalties be deposited into a special occupational safety and health trust fund established in the State Treasurer's office. Money is appropriated from the fund by the General Assembly in the budget bill for specified purposes. Under current law, proceeds are deposited in the General Fund.

29 Sec. 16. G.S. 95-138(b) reads as rewritten:

30 "(b) All civil penalties and interest recovered by the Commissioner, together with
31 the costs thereof, shall be paid into the general fund of the State treasury, a fund
32 hereby established in the State Treasurer's Office, to be known as the 'Occupational
33 Safety and Health Trust Fund'. These moneys shall be used to support programs that
34 provide occupational safety and health training for workers and employers, and for
35 other purposes that directly promote safe and healthful working conditions.

1 The use of funds from the Occupational Safety and Health Trust Fund, for the
2 purposes set out in this subsection, shall be pursuant to appropriations in the Current
3 Operations Appropriations Act. Funds appropriated from the Occupational Safety and
4 Health Trust Fund that are unexpended and unencumbered at the end of the fiscal year
5 for which they are appropriated shall revert to the State treasury to the credit of the
6 Occupational Safety and Health Trust Fund in accordance with G.S. 143-18."

SECTION 17 allows the Commissioner of Labor to attach a lien against a person's property for unpaid OSHA penalties. The lien attaches when the Commissioner files a final order with the clerk of court in the county in which the property is located. The Commissioner may enforce these liens through foreclosure proceedings and other remedies generally available to tax collectors in the collection of unpaid taxes.

7 Sec. 17. Chapter 95 of the General Statutes is amended by adding a new
8 section to read as follows:

9
10 **"§ 95-141A. Lien and Collection.**

11 (a) A lien shall attach to all property held by a person, firm or corporation against
12 whom a penalty has been assessed at the time the Commissioner files a final order in
13 the office of the clerk of superior court of the county where the property is located.
14 All costs and interest allowed by law shall be added to the amount of the lien and shall
15 be regarded as attaching at the same time as the lien for the principal amount of the
16 penalty. The priority of the lien shall be determined in accordance with the following
17 rules:

18 (1) Subject to the provisions of the Revenue Act prescribing the priority
19 of tax liens, the lien for penalties imposed under the provisions of this
20 Article shall be superior to all other liens, assessments, charges,
21 rights, and claims of any and every kind in and to the real property to
22 which this lien attaches regardless of the claimant and regardless of
23 whether acquired prior or subsequent to the attachment of this lien.

24 (2) The priority of this lien shall not be affected by transfer of title to the
25 real property after the lien has attached, nor shall it be affected by the
26 death, receivership, or bankruptcy of the owner of the real property to
27 which the lien attaches;

28 (3) The lien, when it attaches to personal property, shall be inferior to
29 prior valid liens and perfected security interests and superior to all
30 subsequent liens and security interests.

31 (b) The Commissioner shall have the same authority for collecting penalties
32 under this Article as a tax collector has for collecting taxes under Article 26 of Chapter
33 105 of the General Statutes."

SECTION 18 prohibits the OSHA Review Board from reducing the classification of a violation cited by the Commissioner or reducing a penalty assessed by the Commissioner unless the Board finds that the violation did not exist or that the Commissioner did not follow proper procedure in determining the amount of the penalty.

Sec. 18. G.S. 95-135(b) reads as rewritten:

"(b) The Board shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. The Board shall not reduce the amount of a penalty assessed by the Commissioner, nor shall the board reduce the classification of a violation from serious to nonserious, absent a finding by the Board that the violation for which the penalty was assessed did not exist, or that the determination by the Commissioner that the violation was serious was clearly erroneous, or that the Commissioner failed to follow proper procedure in classifying the violation or determining the amount of the penalty. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the Board until after full and adequate hearing. The Board in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the Board."

SAFETY PROGRAMS FOR STATE CONTRACTS & FUNDS

SECTION 19 prohibits the award of State purchase contracts, State construction contracts, and State highway contracts to contractors or vendors who do not have safety training programs and to contractors or vendors with 11 or more employees who do not have employer/employee safety committees. Employers (including governmental agencies) must also meet these requirements if they use the services of the State's purchasing office or receive more than \$500,000 in one fiscal year through State appropriations or grants.

Section 19.1 is a conforming amendment to the DOT statutes.

1 Sec. 19. Chapter 143 of the General Statutes is amended by adding the
2 following new Article to read:

3

4

"Article 8C.

5

"Workplace Safety Requirements for State Contracts.

6

7

"§ 143-129.4. Workplace Safety Requirements.

8

9

(a) Policy. It is the policy of the State to encourage and promote the use of safety committees and safety and health programs within private industry.

1 (b) Requirement. No contract may be awarded pursuant to Article 3 or Article 8 of
2 this Chapter or Article 2 of Chapter 136 of the General Statutes to a vendor or
3 contractor who does not have in effect:

4 (1) a safety and health training program for its employees to reduce or
5 eliminate hazards and to prevent employees' injuries and illnesses; and

6 (2) a safety and health committee comprised of employer and employee
7 representatives to review the safety and health program, conduct
8 inspections of the worksite on a routine basis and upon the complaint
9 of an employee, review incidents involving work-related fatalities,
10 injuries, and illnesses and complaints regarding safety or health
11 hazards by employees, make recommendations to the employer,
12 conduct meetings, and other functions and activities as authorized by
13 rule of the Commissioner of Labor pursuant to Article.

14 (c) Applicability. Subdivision 2 of subsection (b) shall apply only to employers with
15 11 or more employees.

16
17 **"§ 143-129.5. Recipients of State funds or benefits.**

18 (a) Effective July 1, 1993, any private or governmental entity that uses the services
19 of the Department of Administration pursuant to G.S. 143-49(6) for the purchase of
20 materials, supplies, or equipment shall meet the requirements of G.S. 143-129.4 as a
21 condition of continued use of those services, except as provided in subsection (c) of that
22 section.

23 (b) Effective July 1, 1993, any private or governmental entity that receives more than
24 \$500,000 in State funds during a fiscal year, in the form of grants, appropriations,
25 reimbursements, or otherwise, must meet the requirements of G.S. 143-129.4, except
26 as provided in subsection (c) of that section.

27
28 **"§ 143-129.6. Rules.**

29 The Commissioner of Labor shall adopt rules to implement the provisions of this
30 Article regarding the creation, structure, elements, and operations of the safety and
31 health committees and the safety and health programs.

32
33 **"§143-129.7. Certification.**

34 (a) Each contractor or vendor and each private or governmental entity to which this
35 Article applies shall certify in writing that it has established a safety and health
36 committee and a safety and health program that it in good faith believes meets the
37 requirements of this Article and the rules adopted by the Commissioner of Labor
38 pursuant to G.S. 143-129.6. The certification shall include the then current
39 membership of the safety committee members and state that the committee and the
40 safety and health program have been operated continuously since their inception or the
41 effective date of this Article, whichever is later.

42 (b) With respect to contracts to be awarded, certification is required at the time of
43 submitting bids, or if no bids are solicited, then prior to the award of the contract, as
44 determined by the Secretary of Administration or the Secretary of Transportation, as

1 appropriate. With respect to the use of the purchasing services of the Department of
2 Administration, certification to the Department of Administration is required prior to
3 the entity's additional purchases through those services. With respect to State funds
4 under G.S. 143-129.5(b), certification is to the Office of State Budget and Management
5 no later than 60 days after receipt of the funds. Entities subject to G.S. 143-129.5(b)
6 shall maintain their safety and health programs and safety and health committees for a
7 period of two full calendar years after its last receipt of State funds.

8
9 **"§ 143-129.8. Exemptions.**

10 This Article shall not apply to:

- 11 (1) sole source contracts under Article 3 of this Chapter;
12 (2) a contract subject to the provisions of Articles 3 or 8 of this Chapter
13 whose obligations the Secretary of Administration has determined
14 cannot be fulfilled by compliance with this Article;
15 (3) a contract subject to the provisions of Article 2 of Chapter 136 of the
16 General Statutes whose obligations the Secretary of Transportation has
17 determined cannot be fulfilled by compliance with this Article.

18 An entity exempted from the provisions of this Article pursuant to this section shall
19 nevertheless provide adequate assurances to the Secretary of Administration or the
20 Secretary of Transportation, as appropriate, that it will abide by all applicable safety
21 and health laws, regulations, and standards and will provide, at a minimum, informal
22 mechanisms for its employees to report workplace safety concerns to management
23 without fear of reprisal."

24
25 Sec. 19.1. G.S. 136-28.1 reads as rewritten:

26 **"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

27 (a) All contracts over three hundred thousand dollars (\$300,000) that the Department
28 of Transportation may let for construction or repair necessary to carry out the
29 provisions of this Chapter shall be let to a responsible bidder after public advertising
30 under rules and regulations to be made and published by the Department of
31 Transportation. The right to reject any and all bids shall be reserved to the Board of
32 Transportation. Contracts for construction or repair for federal-aid projects entered
33 into pursuant to this section shall not contain the standardized contract clauses
34 prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site
35 conditions, suspensions of work ordered by the engineer or significant changes in the
36 character of the work. The Department of Transportation shall use only the contract
37 provisions provided in the North Carolina Department of Transportation, Standard
38 Specifications for Roads and Structures, January 1, 1984, except as each may be
39 changed or provided for by rule adopted by the Board of Transportation in accordance
40 with the Administrative Procedure Act.

41 (b) In those cases in which the amount of work to be let to contract for highway
42 construction or repair is three hundred thousand dollars (\$300,000) or less, at least
43 three informal bids shall be solicited. The term "informal bids" is defined as bids in
44 writing, received pursuant to a written request, without public advertising. All such

1 contracts shall be awarded to the lowest responsible bidder. The Secretary of
2 Transportation shall keep a record of all bids submitted, which record shall be subject
3 to public inspection at any time after the bids are opened.

4 (b1) No contract may be awarded pursuant to this Article to a contractor who fails to
5 meet the requirements of Article 8C of Chapter 143 of the General Statutes.

6 (c) The construction and repair of ferryboats and all other marine floating equipment
7 and the construction and repair of all types of docks by the Department of
8 Transportation shall be deemed highway construction or repair for the purpose of G.S.
9 136-28.1 and Chapter 44A and Article 1 of Chapter 143, 'The Executive Budget Act.'
10 In cases of a written determination by the Secretary of Transportation that the
11 requirement for compatibility does not make public advertising feasible for the repair of
12 ferryboats, the public advertising as well as the soliciting of informal bids may be
13 waived.

14 (d) The construction and repair of the highway rest area buildings and facilities,
15 weight stations and the Department of Transportation's participation in the construction
16 of welcome center buildings shall be deemed highway construction or repair for the
17 purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General
18 Statutes, 'The Executive Budget Act.'

19 (e) The Department of Transportation may enter into contracts for construction or
20 repair without complying with the bidding requirements of this section upon a
21 determination of the Secretary of Transportation or the State Highway Administrator
22 that an emergency exists and that it is not feasible or not in the public interest for the
23 Department of Transportation to comply with the bidding requirements. The
24 Department may enter into a contract with a contractor who fails to meet the
25 requirements of Article 8C of Chapter 143 of the General Statutes only in accordance
26 with the provisions of G.S. 143-129.8.

27 (f) The Department of Transportation is required to solicit proposals under rules and
28 regulations published by the Department of Transportation for all contracts for
29 professional engineering services and other kinds of professional or specialized services
30 necessary in connection with highway construction or repair that are over ten thousand
31 dollars (\$10,000). The right to reject any and all proposals is reserved to the Board of
32 Transportation, but the Board of Transportation may consult with the Advisory Budget
33 Commission before awarding any such contract.

34 (g) The Department of Transportation may enter into contracts for research and
35 development with educational institutions and nonprofit organizations without soliciting
36 bids or proposals.

37 (h) The Department of Transportation may enter into contracts for applied research
38 and experimental work without soliciting bids or proposals; provided, however, that if
39 the research or work is for the purpose of testing equipment, materials, or supplies, the
40 provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The
41 Department of Transportation is encouraged to solicit proposals when contracts are
42 entered into with private firms when it is in the public interest to do so.

- 1 (i) The Department of Transportation may negotiate and enter into contracts with
- 2 public utility companies for the lease, purchase, installation, and maintenance of
- 3 generators for electricity for its ferry repair facilities."

SECTION 20 authorizes the State Building Commission to study and recommend ways to improve the health and safety of employees while working on State construction projects. This includes a requirement that the State Building Commission review the terms and conditions of State construction contracts for possible improvements in its safety and health terms.

Section 20.1 codifies one of the existing terms and conditions in most State construction contracts -- a requirement that each contractor designate a responsible person as a safety officer.

4 Sec. 20. G.S. 143-135.26 reads as rewritten:
5 "**§ 143-135.26. Powers and duties of the Commission.** The State Building
6 Commission shall have the following powers and duties with regard to the State's
7 capital facilities development and management program:

- 8 (1) To adopt rules establishing standard procedures and criteria to assure
- 9 that the designer selected for each State capital improvement project
- 10 and the consultant selected for planning and studies of an architectural
- 11 and engineering nature associated with a capital improvement project
- 12 or a future capital improvement project has the qualifications and
- 13 experience necessary for that capital improvement project or the
- 14 proposed planning or study project. The rules shall provide that the
- 15 State Building Commission, after consulting with the funded agency,
- 16 is responsible and accountable for the final selection of the designer
- 17 and the final selection of the consultant except when the General
- 18 Assembly or The University of North Carolina is the funded agency.
- 19 When the General Assembly is the funded agency, the Legislative
- 20 Services Commission is responsible and accountable for the final
- 21 selection of the designer and the final selection of the consultant, and
- 22 when the University is the funded agency, it shall be subject to the
- 23 rules adopted hereunder, except it is responsible and accountable for
- 24 the final selection of the designer and the final selection of the
- 25 consultant. All designers and consultants shall be selected within 60
- 26 days of the date funds are appropriated for a project by the General
- 27 Assembly or the date of project authorization by the Director of the
- 28 Budget; provided, however, the State Building Commission may grant
- 29 an exception to this requirement upon written request of the funded
- 30 agency if (i) no site was selected for the project before the funds were
- 31 appropriated or (ii) funds were appropriated for advance planning
- 32 only.

33 The State Building Commission shall submit a written report to
34 the Joint Legislative Commission on Governmental Operations

- 1 on the Commission's selection of a designer for a project within
2 30 days of selecting the designer.
- 3 (2) To adopt rules for coordinating the plan review, approval, and permit
4 process for State capital improvement projects.
- 5 (3) To adopt rules for establishing a post-occupancy evaluation, annual
6 inspection and preventive maintenance program for all State buildings.
- 7 (4) To develop procedures for evaluating the work performed by designers
8 and contractors on State capital improvement projects and for use of
9 the evaluations as a factor affecting designer selections and
10 determining qualification of contractors to bid on State capital
11 improvement projects.
- 12 (5) To continuously study and recommend ways to improve the
13 effectiveness and efficiency of the State's capital facilities development
14 and management program.
- 15 (6) To request designers selected prior to April 14, 1987, whose plans for
16 the projects have not been approved to report to the Commission on
17 their progress on the projects. The Department of Administration
18 shall provide the Commission with a list of all such projects.
- 19 (7) To appoint an advisory board, if the Commission deems it necessary,
20 to assist the Commission in its work. No one other than the
21 Commission may appoint an advisory board to assist or advise it in its
22 work, work; and
- 23 ~~The Commission shall submit an annual report of its activities to the~~
24 ~~Governor and the Joint Legislative Commission on Governmental~~
25 ~~Operations.~~
- 26 (8) To review the State's provisions for ensuring the safety and health of
27 employees involved with State capital improvement projects, and to
28 recommend to the appropriate agencies and to the General Assembly,
29 after consultation with the Commissioner of Labor, changes in the
30 terms and conditions of construction contracts, State regulations, or
31 State laws that will enhance employee safety and health on these
32 projects.
- 33 The Commission shall submit an annual report of its activities to the
34 Governor and the Joint Legislative Commission on Governmental
35 Operations."

36

37 Sec. 20.1. Chapter 143 of the General Statutes is amended by adding a new
38 section to read:

39

40 "§ 143-135.7. Safety officers.

41 Each contract for a State capital improvement project, as defined in Article 8B of this
42 Chapter, shall require the contractor to designate a responsible person as safety officer
43 to inspect the project site for unsafe health and safety hazards, to report these hazards

1 to the contractor for correction, and to provide other safety and health measures on the
2 project site as required by the terms and conditions of the contract."

WORKERS COMPENSATION

SECTION 21 creates a Special Fund in the State Treasurer's Office called the Safety and Health Fund. Most of the monies generated by the existing 2.5% premium tax on workers compensation would be funneled into this special Fund. The Fund would fund the operations of the Industrial Commission, the Department of Labor's OSHA and Mine Safety programs, and DEHNR's Occupational Health branch. The funding of the OSHA program includes the amount necessary to meet the federal benchmarks for health and safety inspectors. The approximate percentage of revenue to fund these programs is shown in the bill. The remaining proceeds of the tax would go into the General Fund.

The 2.5% tax on workers compensation premiums generated over \$17 million in revenue in the 1990 tax year; the revenue generally increases from year to year.

3 Section 21. G.S. 97-100 reads as rewritten:

4 "§ 97-100. Rates for insurance; carrier to make reports for determination of
5 solvency; tax upon premium; returned or canceled premiums; reports of premiums
6 collected; wrongful or fraudulent representation of carrier punishable as
7 misdemeanor; notices to carrier; employer who carries own risk shall make report
8 on payroll.

9 (a) The rates charged by all carriers of insurance, including the parties to any
10 mutual insurance association writing insurance against the liability for compensation
11 under this Article, shall be fair, reasonable, and adequate.

12 (b) Each such insurance carrier shall report to the Commissioner of Insurance, in
13 accordance with such reasonable rules as the Commissioner of Insurance may at any
14 time prescribe, for the purpose of determining the solvency of the carrier and the
15 adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the
16 books and records of such insurance carrier, and examine its agents, officers, and
17 directors under oath.

18 (c) Every person, partnership, association, corporation, whether organized under the
19 laws of this or any other state or country, every mutual company or association and
20 every other insurance carrier insuring employers in this State against liability for
21 personal injuries to their employees, or death caused thereby, under the provisions of
22 this Article, shall, as hereinafter provided, pay a tax upon the premium received,
23 whether in cash or notes, in this State, or on account of business done in this State, for
24 such insurance in this State, at the rate provided in the Revenue Act then in force,
25 which tax shall be in lieu of all other taxes on such premiums, which tax shall be
26 assessed and collected as hereinafter provided; provided, however, that such insurance
27 carriers shall be credited with all canceled or returned premiums actually refunded
28 during the year on such insurance.

29 (d) Every such insurance carrier shall, for the six months ending December 31,
30 1929, and annually thereafter, make a return, verified by the affidavit of its president

1 and secretary, or other chief officers or agents, to the Commissioner of Insurance,
2 stating the amount of all such premiums and credits during the period covered by such
3 return. Every insurance carrier required to make such return shall file the same with the
4 Commissioner of Insurance on or before the first day of April after the close of the
5 period covered thereby, and shall at the same time pay to the State Insurance
6 Commissioner the tax provided in the Revenue Act then in force on such premium
7 ascertained, as provided in subsection (c) hereof, less returned premium on canceled
8 policies.

9 (e) If any such insurance carrier shall fail or refuse to make the return required by
10 this Article, the said Commissioner of Insurance shall assess the tax against such
11 insurance carrier at the rate herein provided for, on such amount of premium as he may
12 deem just, and the proceedings thereon shall be the same as if the return had been
13 made.

14 (f) If any such insurance carrier shall withdraw from business in this State before the
15 tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the
16 Commissioner of Insurance shall at once proceed to collect the same; and he is hereby
17 empowered and authorized to employ such legal process as may be necessary for that
18 purpose, and when so collected he shall pay the same into the State treasury. The suit
19 may be brought by the Commissioner of Insurance, in his official capacity, in any court
20 of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs
21 therein, and process may issue to any county of the State, and may be served as in civil
22 actions, or in case of unincorporated associations, partnerships, interindemnity
23 contracts, upon any agent of the parties thereto upon whom process may be served
24 under the laws of this State.

25 (g) Any person or persons who shall in this State act or assume to act as agent for
26 any such insurance carrier whose authority to do business in this State has been
27 suspended, while such suspension remains in force, or shall neglect or refuse to comply
28 with any of the provisions of this section obligatory upon such person or party or who
29 shall willfully make a false or fraudulent statement of the business or condition of any
30 such insurance carrier, or false or fraudulent return as herein provided, shall be deemed
31 guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less
32 than one hundred (\$100.00) nor more than one thousand dollars (\$1,000), or by
33 imprisonment for not less than 10 nor more than 90 days, or both such fine and
34 imprisonment in the discretion of the court.

35 (h) Whenever by this Article, or the terms of any policy contract, any officer is
36 required to give any notice to an insurance carrier, the same may be given by delivery,
37 or by mailing by registered letter properly addressed and stamped, to the principal
38 office or general agent of such insurance carrier within this State, or to its home office,
39 or to the secretary, general agent, or chief officer thereof in the United States, or the
40 State Insurance Commissioner.

41 (i) Any insurance carrier liable to pay a tax upon premiums under this Article shall
42 not be liable to pay any other or further tax upon such premiums, under any other law
43 of this State.

1 (j) Every employer carrying his own risk under the provisions of G.S. 97-93 shall,
2 under oath, report to the Commissioner of Insurance his payroll, subject to the
3 provisions of this Article. Such report shall be made in form prescribed by the
4 Commissioner of Insurance, and at the times herein provided for premium reports by
5 insurer. The Commissioner of Insurance shall assess against such payroll a maintenance
6 fund tax computed by taking such percent of the basic premiums charged against the
7 same or most similar industry or business taken from the manual insurance rate then in
8 force in this State as is assessed in the Revenue Act against the insurance carriers for
9 premiums collected on compensation insurance policies. The Commissioner shall use
10 the approved experience modifier of an employer in calculating the employer's
11 maintenance fund tax liability under this subsection. ~~Receipts collected under this~~
12 ~~subsection shall be deposited to the credit of the State Treasurer as general fund~~
13 ~~revenue.~~

14 (k) Every group of two or more employers who have pooled their liabilities pursuant
15 to G.S. 97-93 shall pay a tax upon premiums received in this State in the same manner
16 as the tax is calculated and paid by insurance carriers insuring employers in this State
17 and set forth in subsections (c), (d), (e), and (f) above.

18 (l) A special Safety and Health Fund is created in the Office of the State Treasurer
19 for the purpose of collecting revenue to be distributed for use by State agencies in the
20 enforcement of their safety and health responsibilities.

21 Seventy-three percent of the funds generated by the tax on premiums collected by the
22 Commissioner of Insurance pursuant to subsections (d), (j), and (k) of this section shall
23 be remitted to the Safety and Health Fund along with any taxes, penalties, fees, and
24 assessments collected by or on behalf of these programs and which are not otherwise
25 dedicated to a special fund. The funds shall be distributed as follows:

- 26 (1) twenty-three percent (23%) to the Industrial Commission.
27 (2) forty-five percent (45%) to the Department of Labor for the operation
28 of the Occupational Safety and Health program at federally-approved
29 benchmark levels and the Mine Safety and Health program; and
30 (3) five percent (5%) to the Department of Environment, Health and
31 Natural Resources for the operation of the Occupational Health
32 program.

33 Interest derived from the Fund shall be credited to the Fund. Monies in the Fund
34 shall only be spent pursuant to appropriation by the General Assembly.

35 The special Safety and Health Fund shall be subject to the provisions of the
36 Executive Budget Act except that no unexpended surplus of the Fund shall revert to the
37 General Fund. All funds credited to the Fund shall be used for the operation of the
38 agencies and programs specified herein. The percentage of the tax on premiums
39 credited to the Fund shall not be considered a special purpose obligation or assessment
40 based on premium tax, or a dedicated special purpose tax based on premium tax,
41 within the meaning of G.S. 105-228.8(e). Appropriations and receipts from the
42 General Fund to the Industrial Commission, the Department of Labor and the
43 Department of Environment, Health and Natural Resources for the programs listed

1 herein for the fiscal year 1992-93 shall be refunded to the General Fund from the
2 special Safety and Health Fund.

3 The remaining twenty-seven percent (27%) of the funds not placed into the Special
4 Fund shall go to the General Fund."

SECTION 22 eliminates the requirement that the death of an injured or ill worker occur within a certain time period in order for the worker's dependents to obtain death benefits under the Workers Compensation Act. The current law authorizes death benefits for the dependents only if the death occurs within 6 years after the injury or disease or within 2 years after the final determination of disability, whichever is later. As under the current law, Section 22 retains the requirement that the death result proximately from the injury or illness.

5 Sec. 22. G.S. 97-38 reads as rewritten:

6 "§ 97-38. Where death results proximately from compensable injury or
7 occupational disease; dependents; burial expenses; compensation to aliens; election
8 by partial dependents.

9 If death results proximately from a compensable injury or occupational disease and
10 ~~within six years thereafter, or within two years of the final determination of disability,~~
11 ~~whichever is later,~~ disease, the employer shall pay or cause to be paid, subject to the
12 provisions of other sections of this Article, weekly payments of compensation equal to
13 sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased
14 employee at the time of the accident, but not more than the amount established
15 annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty
16 dollars (\$30.00), per week, and burial expenses not exceeding two thousand dollars
17 (\$2,000), to the person or persons entitled thereto as follows:

18 (1) Persons wholly dependent for support upon the earnings of the
19 deceased employee at the time of the accident shall be entitled to
20 receive the entire compensation payable share and share alike to the
21 exclusion of all other persons. If there be only one person wholly
22 dependent, then that person shall receive the entire compensation
23 payable.

24 (2) If there is no person wholly dependent, then any person partially
25 dependent for support upon the earnings of the deceased employee at
26 the time of the accident shall be entitled to receive a weekly payment
27 of compensation computed as hereinabove provided, but such weekly
28 payment shall be the same proportion of the weekly compensation
29 provided for a whole dependent as the amount annually contributed by
30 the deceased employee to the support of such partial dependent bears
31 to the annual earnings of the deceased at the time of the accident.

32 (3) If there is no person wholly dependent, and the person or all persons
33 partially dependent is or are within the classes of persons defined as
34 'next of kin' in G.S. 97-40, whether or not such persons or such

1 classes of persons are of kin to the deceased employee in equal
2 degree, and all so elect, he or they may take, share and share alike,
3 the commuted value of the amount provided for whole dependents in
4 (1) above instead of the proportional payment provided for partial
5 dependents in (2) above; provided, that the election herein provided
6 may be exercised on behalf of any infant partial dependent by a duly
7 qualified guardian; provided, further, that the Industrial Commission
8 may, in its discretion, permit a parent or person standing *in loco*
9 *parentis* to such infant to exercise such option in its behalf, the award
10 to be payable only to a duly qualified guardian except as in this
11 Article otherwise provided; and provided, further, that if such election
12 is exercised by or on behalf of more than one person, then they shall
13 take the commuted amount in equal shares.

14 When weekly payments have been made to an injured employee before his death, the
15 compensation to dependents shall begin from the date of the last of such payments.
16 Compensation payments due on account of death shall be paid for a period of 400
17 weeks from the date of the death of the employee; provided, however, after said
18 400-week period in case of a widow or widower who is unable to support herself or
19 himself because of physical or mental disability as of the date of death of the employee,
20 compensation payments shall continue during her or his lifetime or until remarriage and
21 compensation payments due a dependent child shall be continued until such child
22 reaches the age of 18.

23 Compensation payable under this Article to aliens not residents (or about to become
24 nonresidents) of the United States or Canada, shall be the same in amounts as provided
25 for residents, except that dependents in any foreign country except Canada shall be
26 limited to surviving wife and child or children, or if there be no surviving wife or child
27 or children, to the surviving father or mother whom the employee has supported, either
28 in whole or in part, for a period of one year prior to the date of the injury; provided,
29 that the Commission may, in its discretion, or, upon application of the employer or
30 insurance carrier shall commute all future installments of compensation to be paid to
31 such aliens to their present value and payment of one half of such commuted amount to
32 such aliens shall fully acquit the employer and the insurance carrier."

SECTION 23 requires workers compensation insurance carriers to provide their insured employers with health and safety consultations, advice, and inspections. The actual requirements will be established by the Rate Bureau, subject to the approval of the Commissioner of Insurance. The section also eliminates a seldom used provision allowing workers compensation carriers to obtain Department of Labor certification that an employer in the assigned-risk pool is complying with all Department of Labor rules.

33 Sec. 23.1. G.S. 58-36-1 reads as rewritten:

34 "§ 58-36-1. North Carolina Rate Bureau created.

1 There is hereby created a Bureau to be known as the 'North Carolina Rate Bureau,'
2 with the following objects and functions:

3 (1) To assume the functions formerly performed by the North Carolina
4 Fire Insurance Rating Bureau, the North Carolina Automobile Rate
5 Administrative Office, and the Compensation Rating and Inspection
6 Bureau of North Carolina, with regard to the promulgation of rates,
7 for insurance against loss to residential real property with not more
8 than four housing units located in this State and any contents thereof
9 and valuable interest therein and other insurance coverages written in
10 connection with the sale of such property insurance; for theft of and
11 physical damage to private passenger (nonfleet) motor vehicles as the
12 same are defined under Article 40 of this Chapter; for liability
13 insurance for such motor vehicles, automobile medical payments
14 insurance, uninsured motorists coverage and other insurance coverages
15 written in connection with the sale of such liability insurance; and for
16 workers' compensation and employers' liability insurance written in
17 connection therewith except for insurance excluded from the Bureau's
18 jurisdiction in G.S. 58-36-1(3).

19 (2) The Bureau shall provide reasonable means to be approved by the
20 Commissioner whereby any person affected by a rate made by it may
21 be heard in person or by his authorized representative before the
22 governing committee or other proper executive of the Bureau.

23 (3) The Bureau shall have the duty and responsibility of promulgating and
24 proposing rates for insurance against loss to residential real property
25 with not more than four housing units located in this State and any
26 contents thereof or valuable interest therein and other insurance
27 coverages written in connection with the sale of such property
28 insurance; for insurance against theft of or physical damage to private
29 passenger (nonfleet) motor vehicles; for liability insurance for such
30 motor vehicles, automobile medical payments insurance, uninsured
31 motorists coverage and other insurance coverages written in connection
32 with the sale of such liability insurance; and for workers'
33 compensation and employers' liability insurance written in connection
34 therewith. The provisions of this subdivision shall not apply to motor
35 vehicles operated under certificates of authority from the Utilities
36 Commission, the Interstate Commerce Commission, or their successor
37 agencies, where insurance or other proof of financial responsibility is
38 required by law or by regulations specifically applicable to such
39 certificated vehicles. The Bureau shall have no jurisdiction over excess
40 workers' compensation insurance for employers qualifying as
41 self-insurers as provided in G.S. 97-93; nor shall the Bureau's
42 jurisdiction include farm buildings, farm dwellings and their
43 appurtenant structures, farm personal property or other coverages
44 written in connection with farm real or personal property; travel or

1 camper trailers designed to be pulled by private passenger motor
2 vehicles, unless insured under policies covering nonfleet private
3 passenger motor vehicles; residential real and personal property
4 insured in multiple line insurance policies covering business activities
5 as the primary insurable interest; and marine, general liability,
6 burglary and theft, glass, and animal collision insurance, except when
7 such coverages are written as an integral part of a multiple line
8 insurance policy for which there is an indivisible premium.

9 (4) Agreements may be made between or among members with respect to
10 equitable apportionment among them of insurance which may be
11 afforded applicants who are in good faith entitled to but who are
12 unable to procure such insurance through ordinary methods. The
13 members may agree between or among themselves on the use of
14 reasonable rate modifications for such insurance, agreements, and rate
15 modifications to be subject to the approval of the Commissioner.

16 (5) It is the duty of every insurer that writes workers' compensation
17 insurance in this State and is a member of the Bureau, as defined in
18 this section and G.S. 58-36-5 to insure and accept any workers'
19 compensation insurance risk that has been certified to be 'difficult to
20 place' by any fire and casualty insurance agent who is licensed in this
21 State. When any such risk is called to the attention of the Bureau by
22 receipt of an application with an estimated or deposit premium
23 payment and it appears that the risk is in good faith entitled to such
24 coverage, the Bureau will bind coverage for 30 days and will designate
25 a member who must issue a standard workers' compensation policy of
26 insurance that contains the usual and customary provisions found in
27 those policies. Coverage will be bound at 12:01 A.M. on the first day
28 following the postmark time and date on the envelope in which the
29 application is mailed including the estimated annual or deposit
30 premium, or the expiration of existing coverage, whichever is later. If
31 there should be no postmark, coverage will be effective 12:01 A.M.
32 on the date of receipt by the Bureau unless a later date is requested.
33 Those applications hand delivered to the Bureau will be effective as of
34 12:01 A.M. of the date following receipt by the Bureau unless a later
35 date is requested. ~~The designated carrier may request of the Bureau~~
36 ~~certification of the State Department of Labor that the insured is~~
37 ~~complying with the laws, rules, and regulations of that Department.~~
38 ~~The certification must be finished within 30 days by the State~~
39 ~~Department of Labor unless extension of time is granted by agreement~~
40 ~~between the Bureau and the State Department of Labor.~~ The Bureau
41 will make and adopt such rules as are necessary to carry this section
42 into effect, subject to final approval of the Commissioner. As a
43 prerequisite to the transaction of workers' compensation insurance in
44 this State, every member of the Bureau that writes such insurance

1 must file with the Bureau written authority permitting the Bureau to
2 act in its behalf, as provided in this section, and an agreement to
3 accept risks that are assigned to the member by the Bureau, as
4 provided in this section.

5 (6) The Bureau shall maintain and furnish to the Commissioner on an
6 annual basis the statistics on earnings derived by member companies
7 from the investment of unearned premium, loss, and loss expense
8 reserves on nonfleet private passenger motor vehicle insurance policies
9 written in this State. Whenever the Bureau proposes rates under this
10 Article, it shall prepare a separate exhibit for the experience years in
11 question showing the combined earnings realized from the investment
12 of such reserves on policies written in this State. The amount of
13 earnings may in an equitable manner be included in the ratemaking
14 formula to arrive at a fair and equitable rate. The Commissioner may
15 require further information as to such earnings and may require
16 calculations of the Bureau bearing on such earnings.

17 (7) Member companies shall furnish, upon request of any person carrying
18 nonfleet private passenger motor vehicle insurance in the State upon
19 whose risk a rate has been promulgated, information as to rating,
20 including the method of calculation.

21 (8) The Bureau shall develop a plan for loss control and accident
22 prevention consultation services. All insurers writing workers
23 compensation insurance in this State shall provide consultation and
24 inspection services to its insureds regarding workplace safety, loss
25 control and accident prevention in accordance with the plan.

26 The plan shall address the types of consultation and inspection
27 services to be provided and may distinguish the required services by
28 the hazards of the industry, employer size, and other relevant factors.

29 The plan shall be filed with the Commissioner of Insurance for
30 approval within 9 months after the effective date of this act.
31 Amendments to the plan shall be filed with the Commissioner for
32 approval within 30 days after their adoption. Plans or portions thereof
33 not approved by the Commissioner shall be revised to address the
34 grounds for disapproval and shall be resubmitted to the Commissioner
35 for approval within 90 days after disapproval."

SAFETY COMMITTEES AND EMPLOYEE DISCRIMINATION

Section 24 of this act creates a new Article featuring three elements: (i) an enhanced legal remedy for employees who are fired or suffer other retaliatory action in their employment for engaging in protected activities; (ii) a requirement for workplace safety and health committees; and (iii) a requirement for workplace safety and health training programs.

Part I of this Article creates a new Retaliatory Discrimination Law. The new law provides protection for employees who file workers compensation claims, OSHA complaints, mine safety complaints, and wage and hour complaints. The protection also extends to activities such as testifying or providing information concerning these claims and complaints. The new law replaces the various statutory remedies currently available for discrimination under the Occupational Safety and Health Act (see Sec. 24.1), the Wage and Hour Act (see Sec. 24.2), the Workers Compensation Act (See Sec. 24.3), and the Mine Safety and Health Act (see Sec. 24.4). Section 24.5 provides that State employees' claims that fall under both the Chapter 126 whistle-blower law and the new law created by this bill will be governed by the law under this bill.

The new law gives employees a choice between an administrative remedy and a private cause of action. The administrative remedy involves filing a complaint with the Commissioner of Labor, who then investigates to determine whether the employee has been unlawfully discriminated against. The Commissioner may order temporary relief, including reinstatement of the employee. Parties have the right to hearings before the Commissioner and to appeals. If the complaint is determined to be frivolous, the employer's defense costs may be assessed against the employee.

The private remedy allows employees to seek relief for retaliatory discrimination in court, regardless of whether the employee has gone through the administrative process. The court may award as relief injunctions, reinstatement, compensatory damages for back-pay and other lost compensation, restoration of seniority rights and other fringe benefits, punitive damages, and costs (including attorneys fees). The court can also assess the employee with the employer's defense costs if the action is found to be frivolous.

Part II requires all employers to develop safety and health programs to reduce or eliminate hazards and to prevent injuries and illnesses. The programs must describe how hazards will be identified and corrected, how accidents will be investigated, how safety and health committee members will be trained, and related topics. Employees must be paid during the time they spend in safety and health training and education activities under the employer's program.

Part III requires each employer with 11 or more employees to create a safety and health committee at each worksite (unless provided otherwise by the Commissioner of Labor under specified circumstances). Each committee will consist of employer and employee representatives. The employer representatives cannot outnumber the employee representatives. The minimum number of employee representatives varies according to the number of nonmanagerial employees on the payroll. The employee representatives are selected by their union or otherwise by their fellow employees.

The safety and health committees have the right, among other things, to review and comment on their employer's safety and health program, review incidents and complaints involving workplace accidents, and conduct inspections of the workplace at least once every 3 months and in response to employee or committee member complaints. The employer must make the time for these inspections and pay the employees their regular wages during the time reasonably spent on safety committee duties and inspections.

1 Sec. 24. Chapter 95 of the General Statutes is amended by adding the
2 following new Article:

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9

"Article 21
"Comprehensive Employee Safety and Health

"Part I.
"Retaliatory Discrimination.

10 "§ 95-240. Discrimination Prohibited.

11 (a) No person shall discriminate or take any retaliatory action against an employee
12 because the employee does or is about to do any of the following:

- 1 (1) File a claim or complaint, initiate an inquiry, investigation, inspection,
2 proceeding or other action, or testify or provide information with
3 respect to any of the following:
 - 4 a. a workers compensation claim;
 - 5 b. a violation of Article 2A (Wage and Hour Act) or Article 16
6 (Occupational Safety and Health Act of North Carolina) of
7 Chapter 95 of the General Statutes; or
 - 8 c. a violation of Article 2A of Chapter 74 of the General Statutes
9 (Mine Safety and Health Act of North Carolina).
- 10 (2) Cause any of the activities listed in subdivision (1) of this subsection to
11 be initiated on the employee's behalf.
- 12 (3) Refuse to perform an assignment or duty that the employee has a
13 reasonable apprehension will result in serious injury to the employee
14 or other employees. In order to qualify for the protection of this
15 subdivision, the employee must have sought, and have been unable to
16 obtain, correction of the unsafe condition causing the employee's
17 refusal to perform the assignment or duty.

18
19 **"§ 95-241. Remedies.**

20 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may pursue the
21 administrative remedy provided under G.S. 95-242 or the private remedy provided
22 under G.S. 95-243.

23 (b) An employee that pursues the administrative remedy under G.S. 95-242 and
24 receives a determination from the Commissioner that no violation of G.S. 95-240 has
25 occurred may commence an action under G.S. 95-243 within one year of the date on
26 which the Commissioner notifies the employee of the determination.

27
28 **"§ 95-242. Administrative remedy; Commissioner investigation and orders;**

29 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may, within 180
30 days after the violation occurs, file (or have filed by any person on the employee's
31 behalf) a complaint with the Commissioner alleging the discrimination or retaliatory
32 action. The Commissioner shall immediately forward a copy of the complaint to the
33 person alleged to have violated G.S. 95-240 (who shall be referred to as the
34 respondent).

35 (b) Not later than 60 days after receipt of a complaint filed under subsection (a), the
36 Commissioner shall conduct an investigation and determine whether there is reasonable
37 cause to believe that the complaint has merit and shall notify the complainant and the
38 respondent of the findings. Where the Commissioner has concluded that there is
39 reasonable cause to believe that a violation has occurred, the Commissioner shall
40 accompany the findings with a preliminary order providing the relief prescribed by
41 subsection (d). The respondent or the complainant may, within 30 days thereafter, file
42 objections to the findings or preliminary order, or both, and request a hearing on the
43 record, except that the filing of such objections shall not operate to stay any
44 reinstatement remedy contained in the preliminary order. The hearings shall be

1 expeditiously conducted. If a hearing is not timely requested, the preliminary order is
2 deemed a final order not subject to judicial review.

3 (c) The Commissioner shall issue a final order within 120 days of the last hearing.
4 In the interim, the proceedings may be terminated at any time by written agreement of
5 the Commissioner, the complainant, and the respondent.

6 (d) If the Commissioner determines that a violation of G.S. 95-240 has occurred, the
7 Commissioner shall order the respondent to:

8 (1) take action to correct the violation;

9 (2) reinstate the complainant to the complainant's former position
10 together with the compensation (including backpay), terms,
11 conditions, and privileges of the complainant's employment; and

12 (3) pay the complainant compensatory damages.

13 (e) At the complainant's request, the Commissioner may assess the complainant's
14 costs and expenses (including attorney's fees) against the respondent if a final order is
15 issued providing any of the relief prescribed in subsection (d). At the respondent's
16 request, the Commissioner may assess the respondent's costs and expenses (including
17 attorney's fees) against the complainant upon a determination that the claim filed by
18 the complainant was frivolous.

19 (f) Any person adversely affected or aggrieved by a final order issued under this
20 section may obtain review of the order in the superior court of the county in which the
21 violation occurred, in which the complainant or respondent resides, or in which the
22 respondent has its principal place of business by filing a petition with the court within
23 30 days after receipt of the final order from the Commissioner. A person who fails to
24 file a petition within the required time waives the right to judicial review under this
25 section. For good cause shown, however, the superior court may accept an untimely
26 petition.

27 (g) Whenever a person has failed to comply with an order issued under this section,
28 the Commissioner shall file a civil action in the superior court of Wake County or in
29 the county in which the violation occurred in order to enforce the order. In actions
30 brought under this subsection, the superior court shall have jurisdiction to grant all
31 appropriate relief, including injunctive relief, reinstatement, back pay, and
32 compensatory damages.

33
34 **"§ 95-243. Private right of action.**

35 (a) An employee aggrieved by an alleged violation of G.S. 95-240 may, within one
36 year after the violation occurs (except) as provided in G.S. 95-241), commence a civil
37 action in the superior court in which the violation occurred, in which the complainant
38 resides, or in which the defendant resides or has its principal place of business.

39 (b) The plaintiff may seek and the court may award any or all of the following types
40 of relief:

41 (1) an injunction to enjoin continued violation of this Article;

42 (2) reinstatement of the employee to the same position held before the
43 retaliatory action or discrimination, or to an equivalent position;

44 (3) reinstatement of full fringe benefits and seniority rights;

- 1 (4) compensation for lost wages, benefits, and other remuneration; or
2 (5) punitive damages.

3 The court may award to the plaintiff and assess against the defendant the reasonable
4 costs and expenses (including attorney's fees) of the plaintiff in bringing an action
5 pursuant to this section. If the court determines that the plaintiff's action is frivolous,
6 it may award to the defendant and assess against the plaintiff the reasonable costs and
7 expenses (including attorneys fees) of the defendant in defending the action brought
8 pursuant to this section.

9
10 **"§ 95-244. Effect of Article on Other Rights.**

11 Nothing in this Article shall be deemed to diminish the rights or remedies of any
12 employee under any collective bargaining agreement or employment contract."

13

14

15

16

17

18 **"§ 95-250. Safety and Health Programs.**

19 (a) Establishment of Program.--Each employer shall, in accordance with this
20 Part, establish and carry out a safety and health program to reduce or eliminate hazards
21 and to prevent injuries and illnesses to employees.

22 (b) Modifications to safety and health programs.--The Commissioner may
23 modify the application of the requirements of this section to classes of employers where
24 the Commissioner determines that, in light of the nature of the risks faced by the
25 employees of such employers, such a modification would not reduce the employees'
26 safety and health protection.

27

28 **"§ 95-251. Safety and Health Program Requirements.**

29 A safety and health program established and carried out under this Part shall be a
30 written program that shall include:

- 31 (1) methods and procedures for identifying, evaluating, and documenting
32 safety and health hazards;
33 (2) methods and procedures for correcting the safety and health hazards
34 identified under subdivision (1);
35 (3) methods and procedures for investigating work-related fatalities,
36 injuries and illnesses;
37 (4) methods and procedures for providing occupational safety and health
38 services, including emergency response and first aid procedures;
39 (5) methods and procedures for employee participation in the
40 implementation of the safety and health program, including
41 participation through any safety and health committee established
42 under Part III of this Article;
43 (6) methods and procedures for responding to the recommendations of the
44 safety and health committee, where applicable;

- 1 (7) methods and procedures for providing safety and health training and
2 education to employees and to members of any safety and health
3 committee established under Part III of this Article;
4 (8) the designation of a representative of the employer who has the
5 qualifications and responsibility to identify safety and health hazards
6 and the authority to initiate corrective action where appropriate;
7 (9) in the case of a worksite where employees of two or more employers
8 work, procedures for each employer to protect employees at the
9 worksite from hazards under the employer's control, including
10 procedures to provide information on safety and health hazards to
11 other employers and employees at the worksite; and
12 (10) such other provisions as the Commissioner requires to effectuate the
13 purposes of this Part.

14
15 **"§ 95-252. Safety and health program rules; compensation.**

16 (a) Not later than 1 year after the effective date of this Part, the Commissioner shall
17 adopt final rules concerning the establishment and implementation of employer safety
18 and health programs under this section. Rules adopted under this section shall include
19 provisions for the training and education of employees and safety and health committee
20 members. These rules shall:

- 21 (1) provide for the training and education of employees, including safety
22 and health committee members, in a manner that is readily
23 understandable by such employees, concerning safety and health
24 hazards, control measures, the employer's safety and health program,
25 employee rights and applicable laws and regulations;
26 (2) provide for the training and education of safety and health committee,
27 concerning methods and procedures for hazard recognition and
28 control, the conduct of worksite safety and health inspections, the
29 rights of the safety and health committee, and concerning other
30 information necessary to enable such members to carry out the
31 activities of the committee under Part III of this Article;
32 (3) require that training and education be provided to employees at the
33 time of employment and to safety and health committee members at
34 the time of selection; and
35 (4) require that refresher training be provided on at least an annual basis
36 and that additional training be provided to employees and to safety
37 and health committee members when there are changes in conditions
38 or operations that may expose employees to new or different safety or
39 health hazards or when there are changes in safety and health
40 regulations or standards under this Act that apply to the employer.

41 (b) No loss of pay.--The time during which employees are participating in
42 training and education activities under this subsection shall be considered as hours
43 worked for purposes of wages, benefits, and other terms and conditions of employment.

1 The training and education shall be provided by an employer at no cost to the
2 employees of the employer."

3
4 **"PART III**
5 **"Safety and Health Committees**
6 **and Employee Safety and Health Representatives.**
7

8 **"§ 95-260. Safety and Health Committees Required.**

9 (a) Each employer of not less than 11 employees shall provide for the establishment
10 of safety and health committees and the selection of employee safety and health
11 representatives in accordance with this section.

12 (b) Safety and Health Committees.--

13 (1) In general.--Each employer covered by this section shall establish a
14 safety and health committee at each worksite of the employer, except
15 that the Commissioner may, by regulation, modify the application of
16 this subsection to:

- 17 a. an employer whose employees do not primarily report to
18 or work at a fixed location; or
19 b. worksites at which less than eleven employees of a
20 covered employer are employed; or
21 c. worksites where employees of more than one employer are
22 employed.

23 Each employer required to establish a safety and health committee
24 under this Part shall, pursuant to rules adopted by the Commissioner,
25 enable the committee to exercise the rights described in this Part.

26 (2) Membership.--Each safety and health committee shall consist of:

- 27 a. the employee safety and health representatives elected or
28 appointed under G.S. 95-261; and
29 b. as determined appropriate by the employer, employer
30 representatives, the number of which may not exceed the
31 number of employee representatives.

32 (3) Chairpersons.--Each safety and health committee shall be cochaired
33 by:

- 34 a. a representative selected by the employer; and
35 b. a representative selected by the employee members of the
36 committee.

37 (4) Rights.--Each safety and health committee may, within reasonable
38 limits and in a reasonable manner:

- 39 a. review any safety and health program established under by the
40 employer under Part II of this Article;
41 b. review incidents involving work-related fatalities, injuries and
42 illnesses and complaints regarding safety or health hazards by
43 employees;
44 c. review, upon the request of the committee or upon the
45 request of the employer representatives or employee
46 representatives of the committee, the employer's work injury
47 and illness records, other than personally identifiable medical

- 1 information, and other reports or documents relating to
2 occupational safety and health;
3 d. conduct inspections of the worksite at least once every 3
4 months and in response to complaints regarding safety or
5 health hazards by employees or committee members;
6 e. conduct interviews with employees in conjunction with
7 inspections of the worksite;
8 f. conduct meetings, at least once every 3 months, and maintain
9 written minutes of such meetings;
10 g. observe the measurement of employee exposure to toxic
11 materials and harmful physical agents;
12 h. establish procedures for exercising the rights of the
13 committee;
14 i. make recommendations on behalf of the committee, and in
15 making recommendations, permit any members of the
16 committee to submit separate views to the employer for
17 improvements in the employer's safety and health program
18 and for the correction of hazards to employee safety or
19 health, except that recommendations shall be advisory only
20 and the employer shall retain full authority to manage the
21 worksite; and
22 j. accompany the Commissioner or the Commissioner's
23 representative during any physical inspection of the worksite.
24 (5) Time for committee activities.--The employer shall permit members
25 of the committee established under this Part to take the time from
26 work reasonably necessary to exercise the rights of the committee,
27 without suffering any loss of pay or benefits for time spent on
28 duties of the committee.
29 (6) Regulations.--Not later than 1 year after the effective date of this
30 section, the Commissioner shall adopt final rules for the
31 establishment and operation of safety and health committees
32 pursuant to this Part. The regulations shall include provisions
33 concerning:
34 a. the establishment of such committees by an employer whose
35 employees do not primarily report to or work at a fixed
36 location;
37 b. the establishment of such committees with regard to worksites
38 at which less than 11 employees of a covered employer are
39 employed;
40 c. the establishment of committees at worksites where employees
41 of more than one employer are employed; and
42 d. the employer's obligation to enable the committee to function
43 properly and effectively, including the provision of facilities
44 and materials necessary for the committee to conduct its
45 activities, and the maintenance of records and minutes
46 developed by the committee.

47
48 **"§ 95-261. Employee Safety and Health Representatives.**

- 49 (a) In general.--Safety and health committees established under this
50 section shall include:
51 (1) one employee safety and health representative where the
52 average number of nonmanagerial employees of the employer

1 at the worksite during the year ending January 1 was more
2 than 10, but less than 50;

3 (2) two employee safety and health representatives where the
4 average number of nonmanagerial employees of the employer
5 at the worksite during the year ending January 1 was more
6 than 50, but less than 100;

7 (3) an additional employee safety and health representative for
8 each additional 100 such employees at the worksite, up to a
9 maximum of six employee safety and health representatives,
10 except as provided in sub-subdivision (2)c. of this section; and

11 (4) where an employer's employees do not primarily report to or
12 work at a fixed location, at worksites at which less than 11
13 employees of a covered employer are employed, or at
14 worksites where employees of more than one employer are
15 employed, a number of employee safety and health
16 representatives as determined by the Commissioner by
17 regulation.

18 (b) Selection.--Employee safety and health representatives shall be
19 selected by and from among the employer's nonmanagerial employees, as
20 follows:

21 (1) Where none of the employer's employees at a worksite are
22 represented by an exclusive bargaining representative, the
23 employees shall elect employee safety and health representatives in
24 an election held in conformity with procedures pursuant to rules
25 adopted by the Commissioner.

26 (2) Where the employer's employees are represented by a single
27 exclusive bargaining representative, the bargaining representative
28 shall designate the employee safety and health representatives.

29 (3) Where the employer's employees are represented by more than one
30 exclusive representative or where some but not all of the employees
31 are represented by an exclusive representative, each bargaining unit
32 of represented employees (and any residual group of unrepresented
33 employees) shall have a proportionate number of employee safety
34 and health representatives based on the number of employees in
35 each bargaining unit or group, except that each such unit or group
36 of 11 or more employees shall have at least one representative. The
37 selection process shall be conducted in accordance with the
38 provisions of subdivisions (1) or (2) as applicable.

39 (4) Regulations.--Not later than 1 year after the effective date of this
40 section, the Commissioner shall adopt rules concerning safety and
41 health representatives. Such rules shall include provisions
42 concerning:

43 a. the number of employee safety and health representatives
44 where an employer's employees do not primarily report to
45 work at a fixed location;

46 b. the number of employee safety and health representatives with
47 respect to worksites at which less than 11 employees of a
48 covered employer are employed;

49 c. the number of employee safety and health representatives at
50 worksites where employees of more than one employer are
51 employed; and

52 d. the selection and election procedures for employee safety and
53 health representatives, such election procedures to provide for

1 a fair election by secret ballot and protect employee's equal
2 rights to participate in the election without being subject to
3 penalty, discipline, improper interference or reprisal.

4
5 **"§ 95-262. Additional Rights.**

6 The rights and remedies provided to employees and employee safety and
7 health representatives by this section are in addition to, and not in lieu of, any
8 other rights and remedies provided by contract, by other provisions of this Act
9 or by other applicable law, and are not intended to alter or affect such rights
10 and remedies.

11
12 **"§ 95-263. Definitions.**

13 The following definitions shall apply to this Article:

14 (1) 'Retaliatory action' means the discharge, suspension or demotion of an
15 employee, or other adverse employment action taken against an employee in
16 the terms and conditions of employment.

17 (2) 'Reasonable apprehension' means that a reasonable person, under the
18 circumstances then confronting the employee, would conclude that
19 performance of the assignment or duty poses a bona fide, substantial risk of
20 injury to or serious impairment of health of the employee or other employees.

21 (3) 'Worksite' means a single physical location where business is conducted
22 or where operations are performed by employees of an employer.

23 The definitions of Article 16 of this Chapter shall also apply to this Article.

24
25 **"§ 95-264. Short Title.**

26 This Article may be cited as the Comprehensive Employee Safety and Health
27 Act of 1992."

28
29 Section 24.1. G.S. 95-130 reads as rewritten:

30 **"§95-130. Rights and duties of employees.** Rights and duties of employees
31 shall include but are not limited to the following provisions:

32 (1) Employees shall comply with occupational safety and health standards
33 and all rules, regulations and orders issued pursuant to this Article which are
34 applicable to their own actions and conduct.

35 (2) Employees and representatives of employees are entitled to participate
36 in the development of standards by submission of comments on proposed
37 standards, participation in hearings on proposed standards, or by requesting
38 the development of standards on a given issue under G.S. 95-131.

39 (3) Employees shall be notified by their employer of any application for a
40 temporary order granting the employer a variance from any provision of this
41 Article or standard or regulation promulgated pursuant to this Article.

42 (4) Employees shall be given the opportunity to participate in any hearing
43 which concerns an application by their employer for a variance from a standard
44 promulgated under this Article.

45 (5) Any employee who may be adversely affected by a standard or variance
46 issued pursuant to this Article may file a petition for review with the
47 Commissioner who shall review the matters set forth and alleged in the
48 petition.

49 (6) Any employee who has been exposed or is being exposed to toxic
50 materials or harmful physical agents in concentrations or at levels in excess of
51 that provided for by any applicable standard shall have a right to file a petition
52 for review with the Commissioner who shall investigate and pass upon same.

1 (7) Subject to regulations issued pursuant to this Article any employee or
2 authorized representative of employees shall be given the right to request an
3 inspection and to consult with the Commissioner, Director, or their agents, at
4 the time of the physical inspection of any work place as provided by the
5 inspection provision of this Article.

6 ~~(8) No employee shall be discharged or discriminated against because such
7 employee has filed any complaint or instituted or caused to be instituted any
8 proceeding or inspection under or related to this Article or has testified or is
9 about to testify in any such proceeding or because of the exercise by such
10 employee on behalf of himself or others of any right afforded by this Article."~~

11 ~~(9) Any employee who believes that he has been discharged or otherwise
12 discriminated against by any person in violation of (8) hereinafter mentioned
13 may, within 30 days after such violation occurs, file a complaint with the
14 Commissioner alleging such discrimination. Upon receipt of such complaint,
15 the Commissioner shall cause such investigation to be made as he deems
16 appropriate. If the Commissioner determines that the provisions of the above
17 subdivision have been violated, he shall bring an action against such person in
18 the superior court division of the General Court of Justice in the county
19 wherein the discharge or discrimination occurred. In any such action the
20 superior court shall have jurisdiction, for cause shown to restrain violations of
21 subdivision (8) of this section and order all appropriate relief including rehiring
22 or reinstatement of the employee to his former position with back pay.~~

23 ~~(10) Within 90 days of the receipt of a complaint filed under subdivision (9)
24 above the Commissioner shall notify the complainant of his determination.~~

25 (11) Any employee or representative of employees who believes that any
26 period of time fixed in the citation given to his employer for correction of a
27 violation is unreasonable has the right to contest such time for correction by
28 filing a written and signed notice within 20 days from the date the citation is
29 posted within the establishment.

30 (12) Nothing in this or any other provision of this Article shall be deemed
31 to authorize or require medical examination, immunization, or treatment for
32 those who object thereto on religious grounds, except where such is necessary
33 for the protection of the health or safety of others."
34

35 Sec. 24.2. G.S. 95-25.20 reads as rewritten:

36 "~~§ 95-25.20. Complainants protected. Records. (a) No employer shall
37 discharge or in any manner discriminate against any employee because the
38 employee files a complaint or participates in any investigation or proceeding
39 under this Article. Any employee who believes that he has been discharged or
40 otherwise discriminated against in violation of this section may, within 60 days
41 after such violation occurs, file a complaint with the Commissioner alleging
42 such discrimination. If the Commissioner determines that the provisions of this
43 section have been violated, he shall bring an action against the employer in the
44 superior court division of the General Court of Justice in the county wherein
45 the discharge or discrimination occurred. In any such action, the superior court
46 shall have jurisdiction, for cause shown, to restrain violations of this section
47 and order all appropriate relief, including rehiring or reinstatement of the
48 employee to his former position with back pay.~~

49 ~~(b) Files and other records relating to investigations and enforcement
50 proceedings pursuant to this Article, or pursuant to Article 21 of this Chapter
51 with respect to Wage and Hour Act violations, shall not be subject to
52 inspection and examination as authorized by G.S. 132-6 while such
53 investigations and proceedings are pending."~~

1 Sec. 24.3. G.S. 97-6.1 is repealed.

2
3 Sec. 24.4. G.S. 74-24.15 reads as rewritten:

4 "**§ 74-24.15. Rights and duties of miners.**(a) Miners shall comply with all
5 safety and health standards and all rules, regulations, or orders issued pursuant
6 to this Article which are applicable to their own actions and ~~conduct.~~ conduct
7 and shall have the rights afforded under Part I of Article 21 of this Chapter.

8 ~~(b) No person shall discharge or in any other way discriminate against or~~
9 ~~cause to be discharged or discriminated against any miner or any authorized~~
10 ~~representative of miners by reason of the fact that such miner or representative~~
11 ~~(i) has notified the Commissioner of any alleged violation or danger, (ii) has~~
12 ~~filed, instituted, or caused to be filed or instituted any proceeding under this~~
13 ~~Article, or (iii) has testified or is about to testify in any proceeding resulting~~
14 ~~from the administration or enforcement of the provisions of this Article.~~

15 ~~(c) Any miner or a representative of miners who believes that he has been~~
16 ~~discharged or otherwise discriminated against by any person in violation of this~~
17 ~~section may, within 30 days after such violation occurs, apply to the~~
18 ~~Commissioner for a review of such alleged discharge or discrimination. A copy~~
19 ~~of the application shall be sent to such person who shall be the respondent.~~
20 ~~Upon receipt of such application, the Commissioner shall cause such~~
21 ~~investigation to be made as he deems appropriate. Upon receiving the report of~~
22 ~~such investigation, the Commissioner shall make findings of fact. If he finds~~
23 ~~that such violation did occur, he shall issue a decision, incorporating an order~~
24 ~~therein, requiring the person committing such violation to take such affirmative~~
25 ~~action to abate the violation as the Commissioner deems appropriate,~~
26 ~~including, but not limited to, the rehiring or reinstatement of the miner or~~
27 ~~representative of miners to his former position with back pay. If he finds that~~
28 ~~there was no such violation, he shall issue an order denying the application.~~
29 ~~Such order shall incorporate the Commissioner's findings therein. An order~~
30 ~~issued by the Commissioner under this subsection is subject to administrative~~
31 ~~and judicial review in accordance with Chapter 150B of the General Statutes.~~
32 ~~Enforcement of a final order or decision issued under this subsection shall be~~
33 ~~subject to the provisions of G.S. 74-24.12.~~

34 ~~(d) Whenever an order is issued under this section at the request of the~~
35 ~~applicant, a sum equal to the aggregate amount of all costs and expenses~~
36 ~~(including attorney's fees) as determined by the Commissioner to have been~~
37 ~~reasonably incurred by the applicant for, or in connection with, the institution~~
38 ~~and prosecution of such proceedings, shall be assessed against the person~~
39 ~~committing such violation."~~

40
41 Sec. 24.5. G.S. 126-86 reads as rewritten:

42 "**§ 126-86. Civil actions for injunctive relief or other remedies.**Any State
43 employee injured by a violation of G.S. 126-85 may maintain an action in
44 superior court for damages, an injunction, or other remedies provided in this
45 Article against the person or agency who committed the violation within one
46 year after the occurrence of the alleged violation of this Article. Article;
47 provided, however, any claim arising under Article 21 of Chapter 95 of the
48 General Statutes may be maintained pursuant to the provisions of that Article
49 only and may be redressed only by the remedies and relief available under that
50 Article."

STATUTE OF REPOSE

Section 25 amends the products liability statute of repose to extend from 6 years to 25 years the period during which a product manufacturer remains liable for injuries, deaths, or property damage caused by a defect in the product. The statute of repose differs from the statute of limitations. The statute of limitations for bringing an action against the manufacturer does not begin to run until the injury occurs. However, the statute of repose begins to run from the time the product was purchased for initial consumption and may extinguish a cause of action before an injury, death, or property damage ever occurs.

Statutes of repose were enacted by many states in the late 1970s in response to concerns about the product liability crisis. The North Carolina statute was enacted in 1979.

- 1 Sec. 25. G.S. 1-50(6) read as rewritten:
- 2 "§ 1-50. Six years. Within six years an action --
- 3 (1) Upon the official bond of a public officer.
- 4 (2) Against an executor, administrator, collector, or guardian on his
- 5 official bond, within six years after the auditing of his final account by
- 6 the proper officer, and the filing of the audited account as required by
- 7 law.
- 8 (3) For injury to any incorporeal hereditament.
- 9 (4) Against a corporation, or the holder of a certificate or duplicate
- 10 certificate of stock in the corporation, on account of any dividend,
- 11 either a cash or stock dividend, paid or allotted by the corporation to
- 12 the holder of the certificate or duplicate certificate of stock in the
- 13 corporation.
- 14 (5) a. No action to recover damages based upon or arising out of the
- 15 defective or unsafe condition of an improvement to real property
- 16 shall be brought more than six years from the later of the
- 17 specific last act or omission of the defendant giving rise to the
- 18 cause of action or substantial completion of the improvement.
- 19 b. For purposes of this subdivision, an action based upon or arising
- 20 out of the defective or unsafe condition of an improvement to
- 21 real property includes:
- 22 1. Actions to recover damages for breach of a contract to
- 23 construct or repair an improvement to real property;
- 24 2. Actions to recover damages for the negligent construction
- 25 or repair of an improvement to real property;
- 26 3. Actions to recover damages for personal injury, death or
- 27 damage to property;
- 28 4. Actions to recover damages for economic or monetary
- 29 loss;
- 30 5. Actions in contract or in tort or otherwise;
- 31 6. Actions for contribution indemnification for damages
- 32 sustained on account of an action described in this
- 33 subdivision;
- 34 7. Actions against a surety or guarantor of a defendant
- 35 described in this subdivision;
- 36 8. Actions brought against any current or prior owner of the
- 37 real property or improvement, or against any other person
- 38 having a current or prior interest therein;
- 39 9. Actions against any person furnishing materials, or against
- 40 any person who develops real property or who performs

- 1 or furnishes the design, plans, specifications, surveying,
2 supervision, testing or observation of construction, or
3 construction of an improvement to real property, or a
4 repair to an improvement to real property.
- 5 c. For purposes of this subdivision, "substantial completion"
6 means that degree of completion of a project, improvement or
7 specified area or portion thereof (in accordance with the
8 contract, as modified by any change orders agreed to by the
9 parties) upon attainment of which the owner can use the same
10 for the purpose for which it was intended. The date of
11 substantial completion may be established by written agreement.
- 12 d. The limitation prescribed by this subdivision shall not be
13 asserted as a defense by any person in actual possession or
14 control, as owner, tenant or otherwise, of the improvement at
15 the time the defective or unsafe condition constitutes the
16 proximate cause of the injury or death for which it is proposed
17 to bring an action, in the event such person in actual possession
18 or control either knew, or ought reasonably to have known, of
19 the defective or unsafe condition.
- 20 e. The limitation prescribed by this subdivision shall not be
21 asserted as a defense by any person who shall have been guilty
22 of fraud, or willful or wanton negligence in furnishing materials,
23 in developing real property, in performing or furnishing the
24 design, plans, specifications, surveying, supervision, testing or
25 observation of construction, or construction of an improvement
26 to real property, or a repair to an improvement to real property,
27 or to a surety or guarantor of any of the foregoing persons, or
28 to any person who shall wrongfully conceal any such fraud, or
29 willful or wanton negligence.
- 30 f. This subdivision prescribes an outside limitation of six years
31 from the later of the specific last act or omission or substantial
32 completion, within which the limitations prescribed by G.S.
33 1-52 and 1-53 continue to run. For purposes of the three-year
34 limitation prescribed by G.S. 1-52, a cause of action based upon
35 or arising out of the defective or unsafe condition of an
36 improvement to real property shall not accrue until the injury,
37 loss, defect or damage becomes apparent or ought reasonably to
38 have become apparent to the claimant. However, as provided in
39 this subdivision, no action may be brought more than six years
40 from the later of the specific last act or omission or substantial
41 completion.
- 42 g. The limitation prescribed by this subdivision shall apply to the
43 exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).
- 44 (6) No action for the recovery of damages for personal injury, death or
45 damage to property based upon or arising out of any alleged defect or
46 any failure in relation to a product shall be brought more than six
47 twenty-five years after the date of initial purchase for use or
48 consumption.
- 49 a. (7) No action against any registered land surveyor as defined in
50 G.S. 89C-3(9) or any person acting under his supervision and
51 control for physical damage or for economic or monetary loss
52 due to negligence or a deficiency in the performance of

1 surveying or platting shall be brought more than 10 years from
2 the last act or omission giving rise to the cause of action.

3 b. For purposes of this subdivision, "surveying and platting" means
4 boundary surveys, topographical surveys, surveys of property
5 lines, and any other measurement or surveying of real property
6 and the consequent graphic representation thereof.

7 c. The limitation prescribed by this subdivision shall apply to the
8 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."
9

10
11
12 RESOLUTION
13
14
15

16 *SECTION 26 requests Congress to require federal agencies charged with enforcing health and safety laws*
17 *to ensure that the agencies' personnel can identify unsafe workplace conditions in the plants they inspect and*
18 *inform the appropriate federal and State authorities.*
19

20 Sec. 26. A JOINT RESOLUTION URGING THE CONGRESS OF THE
21 UNITED STATES TO REQUIRE FEDERAL AGENCIES RESPONSIBLE FOR
22 INSPECTING WORK PLACES TO SHARE INFORMATION WITH STATE
23 AGENCIES RESPONSIBLE FOR THE ENFORCEMENT OF STATE AND FEDERAL
24 OCCUPATIONAL SAFETY AND HEALTH LAWS.
25

26 Whereas, on September 3, 1991, 25 workers died and 55 were injured in a
27 fire at the Imperial Foods processing plant in Hamlet, North Carolina; and

28 Whereas, a primary factor in the deaths and injuries of those workers was
29 their inability to escape from the plant because exit doors nearest to where the fire
30 broke out were locked and no exit signs were posted in the plant to direct workers in
31 the event of an emergency; and

32 Whereas, on the morning that the fire occurred, an inspector from the
33 United States Department of Agriculture (USDA) was in the Imperial Foods plant and
34 was aware that at least one exit door was locked; and

35 Whereas, the exit door that the USDA inspector knew was locked was one of
36 the doors that plant workers tried in vain to escape through; and

37 Whereas, in response to the Imperial fire, the USDA Food Safety Inspection
38 Service (FSIS) has required that an emergency evacuation plan for FSIS personnel be in
39 place in every plant inspected by the FSIS; and

40 Whereas, in response to the Imperial fire, the USDA and the United States
41 Department of Labor, OSHA Division, are jointly considering training of FSIS
42 inspectors to enable them to identify specific safety and health hazards, and are also
43 considering an arrangement whereby FSIS inspectors may report serious uncorrected
44 hazards directly to OSHA; and

1 Whereas, certain federal agency personnel inspect work places with greater
2 frequency than other agency personnel and thus are in a position to identify recurring
3 hazardous conditions; and

4 Whereas, it is an efficient and effective use of existing resources to maximize
5 the ability of every federal work place inspector to identify obvious hazardous
6 conditions, even if the inspector has no authority to order correction of such conditions,
7 and to inform appropriate federal or State agency officials to ensure that the conditions
8 are corrected as quickly as possible; and

9 Whereas, the absence of reasonable cross-training of inspectors may foster
10 circumstances where the method for correcting one violation of a safety and health law
11 directly causes the violation of another safety and health law, as was the case in the
12 Imperial plant; and

13 Whereas, many of the deaths and injuries that occurred at the Imperial plant
14 may have been prevented had the USDA inspector known that the door that was locked
15 to prevent fly infestation was a fire exit and should not have been locked; Now,
16 therefore, be it resolved by the House of Representatives, the Senate concurring:

17 Sec. 26.1. The General Assembly urges the members of Congress of the
18 United States to mandate that all federal agencies charged with the enforcement of
19 safety and health laws ensure that appropriate agency personnel are able and authorized
20 to identify hazardous conditions in the work places they inspect and to inform
21 appropriate federal and State agency officials of violations of safety and health laws the
22 inspectors observe during the course of their regular inspections.

23 Sec. 26.2. The Secretary of State shall transmit copies of this resolution to
24 the members of Congress of the United States from North Carolina and to the Clerk of
25 the United States House of Representatives and the Secretary of the United States
26 Senate.

27 Sec. 26.3. This resolution is effective upon ratification.

APPROPRIATIONS

Sections 27, 27.1, 27.2, and 27.3 appropriate money for the 1992-93 fiscal year for: (1) additional health and safety inspectors in the Department of Labor; (2) fire safety specialists in the Department of Insurance; (3) start-up costs for the development of a safety and health training institute at East Carolina University; and (4) printing, distribution, and pre-paid postage costs for OSHA complaint postcards.

28 Sec. 27. There is appropriated from the General Fund to the Department of
29 Labor the sum of four million two hundred twenty-five thousand one hundred sixty four
30 dollars (\$4, 225,164) for the 1992-93 fiscal year for the employment of 80 safety and
31 health inspectors and related support to meet federal OSHA benchmarks for the North
32 Carolina Occupational Safety and Health program.

33

- 1 (g) Sections 24.1, 24.2, 24.3, 24.4, and 24.5 are effective upon
2 ratification, provided that the repeal of these sections shall not
3 eliminate or impair rights arising under the laws repealed.
4 (h) Section 25 is effective upon ratification and applies to claims arising
5 on or after that date.

APPENDIX C

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



April 27, 1992

Mr. Edward R. Madigan
Secretary
United States Department of Agriculture
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Madigan:

At the request of the General Assembly's LRC Committee on Fire and Occupational Safety at Industrial and Commercial Facilities, we are enclosing for your information a copy of the Committee's recent report to the 1991 General Assembly (Regular Session 1992). This report represents the Committee's deliberations during six meetings held over the past five months.

The Committee was established by the Legislative Research Commission in response to the fire that broke out at Imperial Foods Products, Inc. last September in Hamlet, North Carolina. The Committee's purpose is to study and determine what actions the State needs to take to ensure that workplace safety laws are being enforced effectively. Although the Committee's work is not completed, its members feel strongly that some immediate steps need to be taken towards improving workplace safety in our State. Thus, the attached report makes recommendations for new legislation to be considered by the General Assembly in its short session that will convene on May 26, 1992. After that session adjourns the Committee will reconvene to continue its study and will submit its final report to the 1993 General Assembly in December, 1992.

The Committee calls to your attention pages 8-36 and 8-37 of the report, which contain a resolution urging Congress to require federal agencies to share information with State agencies. At its January, 1992 meeting, Dr. Wilson Horne, Deputy Administrator of your agency, addressed the Committee and explained the agency's responsibilities with respect to inspections of businesses to ensure compliance with agency regulations pertaining to food processing. Dr. Horne also explained and answered questions regarding your agency's involvement in the investigation of the Imperial fire. As stated in the resolution, the Committee believes that information sharing between State and federal agencies is critical to the effective enforcement of workplace safety and health laws, and asks you to work closely with the Secretary of Labor and other appropriate federal agencies to maximize our ability to ensure a safe and healthful workplace for our citizens.

Mr. Edward R. Madigan
Page 2
April 27, 1992

Thank you for you taking the time to review our report and our request for agency cooperation in sharing information with State officials. If you have any questions or would like additional copies of the report please feel free to contact us.

Sincerely,

Senator Aaron W. Plyler, Sr.

Representative Milton F. Fitch, Jr.

Cochairmen

Committee on Fire and Occupational Safety
at Industrial and Commercial Facilities

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



April 27, 1992

Ms. Lynn Martin
Secretary
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Martin:

At the request of the General Assembly's LRC Committee on Fire and Occupational Safety at Industrial and Commercial Facilities, we are enclosing for your information a copy of the Committee's recent report to the 1991 General Assembly (Regular Session 1992). This report represents the Committee's deliberations during six meetings held over the past five months.

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The Committee calls to your attention the section of the report that makes legislative proposals, pages 8-1 through 8-39. A brief explanation of each proposal can be found at pages 8-41 through 8-47. In view of the General Assembly's establishment of this study committee immediately following the Imperial fire, in view of the Committee's intensive study and deliberations as reflected in the report, and in view of other actions our State government has taken related to workplace safety and health matters, the Committee calls upon you to reverse your decision to withdraw approval of the North Carolina Occupational Safety and Health State Plan. The State is committed to addressing the workplace safety and health problems brought to its attention as a result of the Imperial fire and of State agency investigations and legislative studies. Members of our Committee feel strongly that the State is in the best position to ensure that State and federal workplace safety and health laws are enforced as efficiently and effectively as possible.



The Committee also calls to your attention pages 8-36 and 8-37 of the report, which contain a resolution urging Congress to require federal agencies to share information with State agencies. At its January, 1992 meeting, Dr. Wilson Horne, Deputy Administrator in the U.S. Department of Agriculture, addressed the Committee and explained his agency's responsibilities with respect to inspections of businesses to ensure compliance with agency regulations pertaining to food processing. Dr. Horne also explained his agency's involvement in the investigation of the Imperial fire. As stated in the resolution, the Committee believes that information sharing between State and federal agencies is critical to the effective enforcement of workplace safety and health laws, and asks you to work closely with the Secretary of Agriculture and other appropriate federal agencies to maximize our ability to ensure a safe and healthful workplace for our citizens.

We thank you in advance for reading our Committee's report and for considering our request that you not withdraw approval of our State Occupational Safety and Health Plan. If you have any questions or would like additional copies of our report, please feel free to contact us.

Sincerely,

Senator Aaron W. Plyler, Sr.

Representative Milton F. Fitch, Jr.

Cochairmen

Committee on Fire and Occupational Safety
at Industrial and Commercial Facilities