NORTH CAROLINA GENERAL ASSEMBLY

WORKPLACE SAFETY

LEGISLATION

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FROM: *LINWOOD JONES, STAFF ATTORNEY*
NORTH CAROLINA GENERAL ASSEMBLY

During the 1992 legislative session, the General Assembly enacted the most comprehensive reforms of workplace safety laws since the passage of the Occupational Safety and Health Act of North Carolina in 1973. The enacted measures include:

* *a substantial increase in the number of OSHA inspectors*
* *an enhanced retaliatory discrimination law with additional remedies for employees*
* *safety committees and safety programs for employers with poor workers compensation records*
* *a program to target high-risk employers for an OSHA inspection at least once every two years*
* *the authorization of OSHA fines against governmental entities*
* *the sharing of workplace safety data by various agencies with the Department of Labor*
* *a study of safety on State construction sites and a requirement that contractors on State projects designate safety officers*
* *a study to reorganize State and local responsibilities for fire safety and workplace safety*
* *the funding of a new hazardous waste facility at North Carolina State University for waste generated by the University*
* *the clarification of municipalities' authority to enforce the State fire prevention code within their extraterritorial jurisdiction*
* *the strengthening of the existing safety and health program administered for State employees by the Office of State Personnel.*

This publication discusses the new laws and provides some background on the activities and events that have occurred since the Imperial Food Products fire on September 3, 1991. For more detailed information on the work of the Committee on Fire and Occupational Safety at Industrial and Commercial Facilities, please refer to the Committee's interim report to the 1992 session of the General Assembly.

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BACKGROUND

Imperial Food Products began operating its food processing plant in Hamlet, North Carolina, in 1980. The plant cooked chicken products for distribution to restaurants, producing primarily chicken nuggets. On the morning of September 3, 1991, a hydraulic line under repair ruptured, spraying hydraulic fluid onto an adjacent fryer on the production line. The fryer's natural gas burners ignited the vaporized fluid, setting off a flash fire. The fire produced a heavy toxic smoke that poured through the work area. Many of the employees fleeing the fire and smoke encountered locked and blocked fire exits and were unable to escape the building. Twenty-four employees and a salesman in the plant were killed and 56 others were injured.

The Imperial fire is the worst industrial accident in the history of North Carolina and has become a national symbol for reform of workplace safety laws. The General Assembly has responded with a package of workplace safety initiatives adopted during its 1992 session. These initiatives are discussed later in this report. This section discusses many of the other investigations, studies, and activities that occurred between the tragic September fire and the 1992 legislative session.

N.C. Department of Labor: The N.C. Department of Labor's OSHA Division enforces the Occupational Safety and Health Act of North Carolina. North Carolina's State OSHA Program was initially approved by the U.S. Department of Labor in 1973 when the General Assembly enacted the Occupational Safety and Health Act of North Carolina. The State and federal governments enforced the Program concurrently until 1975, when the two parties signed an Operational Status Agreement allowing the State to administer the Program on its own. By 1976, the State had completed all of the steps required for final certification except for meeting the enforcement staff benchmarks. North Carolina is one of 21 states that currently administer their own OSHA programs. (Two other states administer OSHA programs solely for their public employees).

The State OSHA program came under intense scrutinty after the Imperial fire. In late October, 1991, the U.S. Department of Labor cancelled the Operational Status Agreement and resumed "limited concurrent jurisdiction" over the administration of the

North Carolina OSHA Program. Concurrent jurisdiction allows both the State and the federal governments to conduct workplace inspections in the State. The federal OSHA inspections in North Carolina focus on complaints received at the federal offices, those received on the Governor's toll-free hotline, and complaints of discrimination against employees for reporting alleged OSHA violations.

The AFL-CIO petitioned the U.S. Department of Labor to go beyond concurrent jurisdiction and to take over the North Carolina OSHA program completely. The Department initiated the review process required for federal take-over but announced in June, 1992, that the State had sufficiently shown cause why it should not be taken over. The concurrent jurisdiction remains in effect. The Department will review the Program again to determine whether Program deficiencies cited in an earlier special performance report by the U.S. Department of Labor have been corrected.

The North Carolina Department of Labor, with assistance from the State Bureau of Investigation, also investigated the Imperial fire for OSHA violations. Upn completion of the investigation earlier this year, the Department levied $808,150 in OSHA fines against Imperial -- the largest ever in this State.

Congress: Several occupational safety and health reform measures were pending in Congress at the time of the Imperial Food Products plant fire. The most significant still under debate is the proposed Comprehensive Occupational Safety and Health Act (HR 3160). Several of the survivors of the fire testified before the U.S. House's Education and Labor Committee as it deliberated on this bill only days after the fire. The bill provides for, among other things, mandatory employer/employee safety committees and safety programs. Portions of the bill served as a model for the Fire and Occupational Safety Study Committee in its drafting of House Bill 1388. The Education and Labor Committee recently sent a substitute version of the bill to the House floor for debate.

A subcommittee of the House Agriculture Committee also questioned the U.S. Department of Agriculture's role in workplace safety at the meat and poultry plants it inspects. The subcommittee's inquiry was prompted by reports that the USDA inspector at Imperial was aware of the locked exit doors and approved of their locking for the control of flies. The subcommittee was concerned that USDA ignored the responsibility in its own regulations for ensuring workplace safety, although the USDA's position, as

stated to the congressional subcommittee and to the Fire and Occupational Safety Study Committee, is that its workplace safety responsibilities are to its own inspectors. (See the section on USDA).

Governor: The Governor released several workplace safety proposals shortly after the fire. The proposals included the establishment of a toll-free telephone line for employees to report suspected fire, safety or health hazards in the workplace; the authorization and temporary funding for 27 additional OSHA safety inspectors to be hired by the Department of Labor; the proposed creation of a fire safety inspection unit within the Department of Insurance to provide consultative and technical assistance to local inspectors doing fire inspections; and a recommendation that employers voluntarily establish in-house safety and health teams of workers to monitor the workplace for hazards. The 27 positions have been continued by the legislature (along with the creation of additional inspector positions), but action on the fire safety inspection unit has been delayed, pending a Task Force study of the reorganization of State responsibilities for fire safety and occupational safety.

U.S. Department of Agriculture: The USDA has been re-evaluating the role of its inspectors in workplace safety at the plants they inspect. Unlike the OSHA program, the Meat and Poultry Inspection Program requires the presence of USDA inspectors at meat and poultry plants on a daily basis. Although USDA has historically held that its role in workplace safety is to provide for the protection of its own inspectors, it is currently working on a memorandum of understanding with the U.S. Department of Labor that may provide cross-training for USDA inspectors to identify and report basic workplace hazards.

Building Code Council: In 1989, the General Assembly enacted legislation requiring the State Building Code Council to establish a statewide fire prevention code. The Council adopted a fire prevention code that became effective July 1, 1991, just 2 months prior to the Imperial fire.

In response to the fire, the Building Code Council in December, 1991, adopted a mandatory inspection schedule requiring buildings to be inspected by certified local governmental fire inspectors once every 1, 2, or 3 years, depending on their use. Hazardous, institutional, high rise, assembly, and residential structures must be inspected

at least once every year. The residential inspection requirement does not apply to one and two-family dwellings and applies only to the interior common areas of multi-family dwellings. Industrial facilities and educational facilities other than public elementary and secondary schools must be inspected at least once every two years. (The General Assembly already requires public elementary and secondary schools to receive fire inspections at least twice a year.) Business, mercantile, storage, church, and synagogue facilities must be inspected at least once every three years. Local governments performing these inspections may inspect more frequently than required by the Building Code.

North Carolina Department of Insurance: The Department of Insurance oversees fire safety and building code regulations in North Carolina. It conducted two investigations of the Imperial Food Products fire. With the assistance of the Hamlet Fire Department, the Department of Insurance's Fire and Rescue Services Division conducted a "life safety evaluation" to determine why the tragedy occurred and how similar tragedies might be prevented in the future. The Department's Engineering Division also investigated the plant after the fire to determine the existence and extent of Building Code violations at the time of the fire. Many of the plant's Building Code violations involved exitways and exit doors.

At the request of the Governor, the Department also developed a proposal during the fall of 1991 to establish a fire inspection safety unit within the Department to provide technical and consultative assistance to local fire inspectors, to follow-up reports of hazardous workplace conditions, and to provide training for employers in fire prevention. The proposal has been studied by the Joint Legislative Commission on Governmental Operations, the Fire and Occupational Safety Study Committee, and the Appropriations Committees in the House and Senate. Action on the proposal has been delayed, pending the results of a Task Force study on the reorganization of State and local responsibilities for fire safety and occupational safety and health.

State Bureau of Investigation: The State Bureau of Investigation (SBI) conducted an initial investigation of the Imperial fire to determine its cause and origin. The SBI then conducted a second investigation for possible criminal violations by Imperial owners and management and, in conjunction with the Department of Labor, for possible OSHA violations. The investigation, which involved interviews with numerous witnesses, lasted

months. At the conclusion of the investigation, the SBI released a confidential report to the local district attorney containing its findings. Based on those findings, the local district attorney sought and obtained indictments for involuntary manslaughter against Imperial's owner and two of the plant's managers.

North Carolina Supreme Court: The Court has no investigatory or regulatory involvement with the Imperial Food Products fire, but a decision it issued just weeks before the fire may significantly impact the remedies of those injured in the fire and the heirs of those killed. In ***Woodson v. Rowland***, the Court upheld a wrongful death action by a deceased employee's estate against the employer despite claims by the employer that workers compensation death benefits should be the exclusive remedy available. The ***Woodson*** decision will potentially allow Imperial employees (or their estates) to bring civil actions against Imperial if they can prove that Imperial intentionally created a workplace environment that it knew was substantially certain to lead to death or serious injury of employees. Under ***Woodson***, employees may pursue both their claim for workers compensation benefits and a civil action, although they are entitled to only one recovery.

House Bill 1387 would have provided a similar statutory right of action against employers for injuries and deaths resulting from the employer's removal or ordering removal of a machine's safety guard. Although the legislature eventually discontinued deliberations on the bill, an employee or the employee's estate may still attempt to pursue a ***Woodson*** claim for these injuries.

LEGISLATIVE ACTION

Within the week following the Imperial fire, the leadership of the General Assembly announced that it would seek a legislative study on workplace safety. The Legislative Research Commission responded by creating the Committee on Fire and Occupational Safety at Industrial and Commercial Facilities to review the State's workplace safety and fire safety laws and to make recommendations to the 1992 and 1993 sessions of the General Assembly. The Committee was chaired by Senator Aaron Plyler and Representative Milton Fitch, with Representative Pete Cunningham serving as the LRC representative. The other members were Senator Richard Conder, Senator William Martin, Senator Clark Plexico, Senator Alexander Sands, Senator Paul Smith, Representative Anne Barnes, Representative Julia Howard, Representative Sam Hunt, Representative Howard Hunter, Representative John McLaughlin, Representative Harry Payne, Representative George Robinson, Mr. James Andrews, Mr. William Chandler, Mr. Charles Hassell, Mr. Phil Kirk, and Mr. Lawrence Weaver.

The Committee met monthly from December, 1991 to April, 1992, hearing from the Department of Labor, the Department of Insurance, the Industrial Commission, the U.S. Department of Agriculture, the Building Code Council, interest groups, various employers and employees, and other interested individuals. Included in the Committee's activities was a 2-day meeting in the Town of Hamlet, North Carolina.

In March, 1991, the Committee solicited formal recommendations for legislation from interested parties. Combined with other proposals submitted in Hamlet and at earlier Committee meetings, over 75 recommendations were received. After eliminating recommendations that duplicated others and recommendations that the proponents opted to delay until the 1993 session, the committee staff presented a comprehensive draft of proposed legislation to the Committee at its early April meeting. The proposed legislation was presented as one bill.

The Committee reviewed each of the proposals in the draft during a 2-day meeting in early April. The Committee delayed further consideration on some of the proposals until the fall of 1992. The Committee also divided the bill into 14 separate bills and approved each bill at its final April meeting.

The 14 bills were introduced in both the Senate and the House by the Committee co-chairmen. Pursuant to an informal agreement between the two chambers, the House considered the bills first. Most of the bills were considered by the Committee on Courts, Justice, Constitutional Amendments and Referenda in the House and by the Judiciary II Committee in the Senate. Some of the bills were considered by the Appropriations committees of both houses.

Of the 14 bills, 11 were enacted by the General Assembly. The enacted versions of these bills are in substance the same as those recommended by the Fire and Occupational Safety Study Committee. House Bill 1394 underwent perhaps the most change, with the administrative relief available under the original bill replaced with an administrtive conciliation process and the punitive damages replaced with treble damages; otherwise the enacted version is virtually identical to the original bill.

The three bills not enacted were (i) HB 1396, a resolution requesting federal agencies that perform workplace inspections (notably USDA) to train its inspectors to recognize and report basic workplace hazards; (ii) HB 1385, a proposal to create a Safety and Health Fund to fund existing State safety-related programs; and (iii) HB 1387, a proposal to eliminate the statute of repose for the collection of death benefits under the Workers Compensation Act and to allow employees to sue the employer for injuries resulting from the intentional removal of machine safety guards.

Some of the measures contained in these three bills have been or may be accomplished without their enactment. First, the U.S. Department of Agriculture and the U.S. Department of Labor are working on a memorandum of understanding between their two agencies that could provide for cross-training of USDA inspectors on identifying basic workplace safety violations. Second, the Industrial Commission, the OSHA Division, and the Occupational Health Unit of DEHNR were funded by the General Assembly from the General Fund at the same levels they would have been funded under the proposed Safety and Health Fund. Finally, the legislature left intact the North Carolina Supreme Court's 1991 decision in ***Woodson v. Rowland,*** which potentially gives employees injured or killed by an employer's intentional workplace misconduct a right of action for damages beyond workers compensation benefits.

SUMMARIES OF ENACTED LEGISLATION

(All references to Chapter numbers are to the 1991 Session Laws, 1992 Regular Session.)

RETALIATORY DISCRIMINATION: House Bill 1394 (Chapter 1021) establishes a new retaliatory discrimination law to protect employees who are discharged or discriminated against for engaging in protected activities under (1) the Occupational Safety and Health Act, (2) the Mine Safety and Health Act, (3) the Wage and Hour Act, and (4) the Workers Compensation Act.

The new law replaces the existing anti-discrimination laws in these four areas with a uniform law that contains an administrative conciliation process and provides enhanced remedies for employees. Most of the activities protected under the new law were already protected under the existing laws or judicial or regulatory interpretations of those laws. For example, OSHA law has since 1973 prohibited employers and other persons from discriminating against employees for filing complaints with OSHA, requesting OSHA inspections, and testifying in OSHA proceedings. The courts have extended the protection of the law to cover complaints made not only to OSHA, but also to the employer and other persons. The judicial constructions of these laws have been codified as part of the new law.

Under the new law, an employee who is discharged or otherwise discriminated against for engaging in activity protected under the Act must first file a complaint with the Commissioner of Labor. If the Commissioner of Labor finds that the complaint is without merit, he will dismiss it immediately and issue the employee a right-to-sue letter that will allow the employee to bring a civil action on his own. If the Commissioner finds that the complaint has merit, he will attempt to persuade the employee and the respondent to settle their differences. If settlement negotiations fail, the Commissioner will either take the case to court on behalf of the employee or issue the employee a right-to-sue letter so that the employee can bring his own action. If no settlement has been reached within 180 days and the Commissioner has not taken the action to court, the employee may obtain a right-to-sue letter to take the action to court.

It is within the Commissioner's discretion to decide which actions to take to court on behalf of employees. The current State OSHA Plan agreement with the federal government requires the Commissioner to prosecute all meritorious OSHA discrimination complaints on behalf of employees. Unless an amendment to the agreement is permitted by the United States Department of Labor, the Commissioner will continue to pursue all OSHA discrimination actions on behalf of employees.

At the conclusion of the administrative process, the Commissioner or the employee has 90 days in which to file a civil action in superior court. The employee can file the action only if the Commissioner has not filed one on the employee's behalf. Injunctive relief, reinstatement, lost wages, and damages for economic losses proximately caused by the discharge or discrimination are available as remedies to the employee. In addition, the new legislation provides for the damages to be trebled if the discharge or discrimination is willful. In nearly every instance, action taken against an employee in retaliation for engaging in protected activity under this act will be considered willful and will therefore result in a treble damages award. Attorneys' fees are also recoverable.

There are three distinct provisions in the legislation to guard against bad faith claims by employees. First, only good faith claims of retaliation are recognized under the law. Second, a defendant in a civil action may have attorneys' fees assessed against an employee that brings a frivolous action. Third, an employer can defend suits brought under this law by showing that it would have discharged or taken other disciplinary action against the employee for reasons other than those alleged by the employee.

One of the more significant repeals in this legislation involves G.S. §97-6.1, the 1979 law that prohibited an employer from discharging or demoting an employee for filing a workers compensation claim. Several affirmative defenses, such as the employee's absenteeism or malingering, were available to the employer under G.S. 97-6.1. It was unclear whether these defenses, once proven, were an absolute bar to the employee's claim or whether the employer also had to prove that these defenses actually motivated the discharge or demotion. Under the new law, these and other defenses are available to the employer if it is shown that they actually motivated the employer's retaliatory actions against the employee and were not merely a pretext for those actions.

Also eliminated by repeal of G.S. 97-6.1 was a provision allowing an employer to terminate an employee with a permanent partial disability that interfered with the employee's ability to adequately perform available work. This provision was inconsistent with the State's Handicapped Protection Act and would be inconsistent with the applicable provisions of the Americans with Disabilities Act. These laws require employers to make reasonable accommodations for handicapped employees. If a reasonable accommodation cannot be made, there is nothing under the new discrimination law that would require the employee to be retained for employment.

SPECIAL EMPHASIS INSPECTIONS: House Bill 1391 (Chapter 924) requires the Department of Labor to create a special emphasis inspection program that targets employers with high rates of accidents or OSHA violations and employers in high-risk industries for more frequent inspections. The Department of Labor must inspect each targeted employer at least once every two years. This special emphasis inspection program will become operational by July 1, 1993.

There are four categories of employers that will be targeted:

(1) Those with high rates of serious or willful OSHA violations;
(2) Those with high rates of work-related deaths or serious illnesses or injuries;
(3) Those engaged in high-risk industries; and
(4) Those with high experience rate modifiers on their workers compensation insurance policies.

The Commissioner of Labor determines the threshhold at which an employer's accident rate, OSHA violations, or experience rate modifier brings it within the targeted group. The experience rate modifier used for targeting inspections may differ from the 1.5 modifier in House Bill 1388 that triggers safety programs and, in cases of 11 or more employees, safety committees. The Commissioner also determines which industries are considered high-risk for serious or fatal work-related injuries or illnesses.

Much of the data used for targeting under this legislation will come from the Department of Insurance, the Rate Bureau, the Industrial Commission, and the Chief Medical Examiner. The release of this data is provided for in House Bill 1391. The data retains its confidentiality as it passes from these agencies to the Department of

Labor. The Department must update its records annually to ensure that targeting is based on the most current data available.

Information about the special emphasis inspection program will be made available prior to its implementation. However, as is true with current OSHA inspections, an employer cannot be notified in advance of an inspection to be conducted under the special emphasis program.

PUBLIC AGENCY FINES: House Bill 1386 (Chapter 1020) subjects State and local governmental agencies to fines under the Occupational Safety and Health Act. Governmental agencies will be subject to OSHA fines to the same extent as private employers. The maximum civil fine under OSHA is $70,000 for a willful or repeated violation and $7,000 for a serious violation. Had fines been levied against State and local agencies during 1991, the total amount of the fines, after penalty discounts, would have totaled approximately $180,000.

Like private employers, governmental agencies are eligible for penalty reductions for good faith, employer size, first-time violations, and the gravity of the violation. The size reduction alone is substantial -- employers with 25 or fewer employees are currently eligible under OSHA regulations for a 60% penalty discount. Even employers with as many as 250 employees are entitled to a 20% discount for size alone. As much as 35% in penalty discounts are also available under the other discount factors. Like private employers, governmental agencies are also entitled to contest penalties imposed by the Commissioner of Labor by appealing to the Safety and Health Review Board. The Safety and Health Review Board operates independently of the Department of Labor.

The legislation also requires local governments to report their OSHA violations to their workers compensation carrier or to the worker compensation risk pool to which they belong. The carrier or risk pool will be able to assist the local governmental unit in identifying and correcting other potential workplace hazards so that future violations can hopefully be avoided. The legislation also ensures that the local governmental unit's staff makes the unit's governing board aware of the OSHA violation.

This legislation applies immediately to State agencies. The fines against local governments are delayed until January 1, 1993, so that smaller towns and cities in particular will have sufficient notice of the fines. However, local governments are subject immediately to the reporting requirements in the legislation. Also, local government OSHA violations that occur between now and January 1, 1993, can be cited by the Commissioner of Labor, even though no fines will attach; this is merely an extension of the law since 1973 allowing the Commissioner to issue notices "in-lieu-of citations" to State and local governments informing them of their OSHA violations. Criminal penalties imposed by the courts under OSHA are unaffected by this legislation; they continue to apply to all employers, private and governmental, as they have since 1973.

State agency violations are monitored by the Employee Safety and Health Division of the Office of State Personnel. Pursuant to House Bill 1390, that Division will keep the General Assembly's Joint Legislative Commission on Governmental Operations apprised of State agency OSHA violations.

With the enactment of this law, North Carolina joins the majority of states with state OSHA programs in fining public agencies for OSHA violations.

HIRING ADDITIONAL OSHA INSPECTORS: House Bill 1340 (Chapter 900) is the State's current operating budget for the 1992-93 fiscal year. It provides an additional $3.7 million in funding to the Department, most of which is to be used to continue the 27 OSHA safety inspector positions added by the Governor last year after the Imperial Food Products fire and to pay for 3 new OSHA safety inspectors, 4 new safety supervisors, 31 new health inspectors, and 3 new health supervisors. The funds also provide for related clerical and professional staff. (This appropriation was originally introduced as House Bill 1384).

The additional positions (beyond the 27 created by the Governor) will be phased in, with one-fourth of the positions being filled during each quarter of the 1992-93 fiscal year. Once all inspector positions are filled by the end of the fiscal year, the State OSHA program will meet the benchmark levels established by the U.S. Labor Department for both safety and health inspectors. By that time, the number of

inspectors will have more than doubled the number in place at the time of the Imperial fire.

SAFETY REORGANIZATION TASK FORCE: House Bill 1395 (Chapter 1008) creates a Task Force to study how State and local responsibilities for fire safety and occupational safety and health are organized and to propose a reorganization of these responsibilities that will eliminate duplication, provide for coordination of resources and regulatory action, and better serve the public. The members of the Task Force represent the State agencies that have fire safety and/or occupational safety and health responsibilities, local governments, community colleges, business, and labor.

Enforcement of occupational safety and health laws is vested primarily in the Department of Labor, but DEHNR operates an occupational health program, the Industrial Commission operates its own safety program for employers, DOT enforces safety laws for commercial truck drivers under the Surface Transportation Assistance Act, and the Utilities Commission has statutory authority to enforce safety laws for the benefit of public utility employees. In addition, fire safety is handled by the Department of Insurance, with enforcement primarily at the local level. Each of these agencies is represented on the Task Force. The Task Force is charged with reorganizing these responsibilities to meet the goals set out in the legislation.

The Task Force must make an interim report to the LRC Fire and Occupational Safety Study Committee by October 1, 1992, and a final report to the members of the General Assembly by March 1, 1993.

SAFETY COMMITTEE AND SAFETY PROGRAMS: House Bill 1388 (Chapter 962) requires certain employers to establish safety programs and safety committees. Each employer with a workers compensation experience rate modifier of 1.5 or greater must establish and maintain a safety program. An employer with an experience rate modifier of 1.5 or greater must also establish a joint labor/management safety committee if it has 11 or more employees.

An experience rate modifier is used by the insurance industry to determine the extent to which an individual employer's workers compensation loss experience differs from the average loss experience of other employers in the same classification. The modifier takes into consideration the three years of loss experience prior to the effective date of the policy. It may increase or decrease the premium the employer pays for workers compensation. A 1.5 modifier represents significantly higher-than-average loss experience for an employer and results in a 50% surcharge on the employer's workers compensation policy premium.

The safety program component of this legislation requires the covered employer to establish a written safety program that will identify appropriate accident investigation procedures, hazard recognition and control procedures, first aid and emergency response procedures and related safety program elements. The program must also provide for training of employees on workplace hazards. Employees are entitled to their pay during the time spent in training.

The safety committee component requires the covered employer to create a safety committee consisting of representatives of both the employer and its employees. The employee representatives must be selected by their fellow employees (or by their labor unions). They cannot be chosen by the employer. The number of employee representatives selected for the committee depends on the number of nonmanagerial employees on the payroll. Only one employee representative is required for an employer with less than 50 nonmanagerial employees. As the number of nonmanagerial employees increases, the number of employee safety and health representatives increases, up to a maximum of six employee representatives.

The employer selects its representatives. The number of employer representatives cannot exceed the number of employee representatives. Each safety committee is co-chaired by an employer and an employee representative.

The duties of the committee are obligatory. Among its duties, it must inspect the worksite once every 3 months and in response to employee complaints. It must conduct meetings once every 3 months, and the employer must provide the time and the facilities for the mee ıgs and provide for the retention of the committee's records. Other duties of the committee include review of workplace accidents and workplace injury and illness

records (except for confidential medical information), observation of tests conducted for toxic exposures, and accompanying OSHA inspectors on their inspections. Safety committee members are entitled to their pay during the work of the committee. The Commissioner of Labor will, by rule-making, establish what constitutes a reasonable amount of time for safety committees to perform their duties.

The safety committee advises management on any safety hazards or problems that it sees and may suggest corrective action. The committee has no authority to order corrective action since the legislation specifically states that the employer maintains managerial control over the worksite.

The Commissioner of Labor will notify employers whose experience rate modifier is 1.5 or greater. An employer will have 60 days from notification in which to certify to the Commissioner that it complies with the applicable provisions of this legislation. Failure to comply with the new law will subject the employer to penalties that are scaled according to employer size. The fines range from a $2,000 maximum for small employers to $25,000 for larger employers. The amount of the fines are also adjusted according to the nature of the violation, whether it is a first violation, and steps taken by the employer to correct the violation. The fines may be contested before the Safety and Health Review Board in the same manner that other OSHA fines are contested. The fines are in addition to any other fines that may be imposed under OSHA.

An employer may discontinue a safety program or safety committee during any period in which its experience rate modifier falls below 1.5. An employer's experience rate modifier is typically adjusted on an annual basis. An employer with a 1.5 or greater experience rate modifier may also discontinue a safety committee if its workforce falls below 11 employees and it so notifies the Commissioner of Labor.

If an employer has a 1.5 modifier and 11 or more employees, only those worksites with 11 or more employees are required to have a safety committee. For example, an employer with 25 employees, 15 of which are at one site and 10 of which are an another site, is not required to have a safety committee for the site with 10 employees. These employees will be covered, however, by the required safety program. Full-time and most part-time employees will be counted in determining whether or not there are 11 or more employees; most seasonal and casual employees will not be counted since the

legislation looks only to those employees working 20 or more weeks (whether consecutive or not) during the current or preceding year.

Certain groups of employers will not be subject to this legislation because they either have no experience rate modifier or their experience rate modifier is not produced by or through the North Carolina Rate Bureau. First, employers who are not required to purchase workers compensation insurance and who do not in fact voluntarily purchase it will have no experience rate modifier. Employers with less than 3 employees and farm employers with less than 10 full-time nonseasonal employees are examples of employers who are not required to purchase workers compensation insurance. Second, employers who do not generate a sufficient premium volume do not qualify for experience rating and are instead assessed premiums based on manual rates. Many small employers in low-risk industries with lower workers compensation costs will not generate the average $2,500 in annual premiums required to qualify for experience rating and will therefore have no experience rate modifier. Third, employers that are self-insured, either individually or within a group, either do not have experience rate modifiers or their modifiers are obtained from a source other than the North Carolina Rate Bureau. Under the current legislation, only employers whose experience rate modifier is obtained from the Rate Bureau are potentially subject to the bill.

It is estimated that at any one time only five percent or less of the businesses within the State will be affected by this legislation. Safety programs and safety committees for State agencies are covered under House Bill 1390. Other governmental entities, such as cities and counties, could potentially be covered by this legislation if they purchase commercial workers compensation insurance. Most of these entities are self-insured.

STATE EMPLOYEES SAFETY REQUIREMENTS PROGRAM: House Bill 1390 (Chapter 994) codifies the existing State Employees Workplace Requirements Safety Program that is administered by the Office of State Personnel. The program was initiated by executive order several years ago. The legislative codification of the Program makes it binding on all executive branch agencies, including State universities.

The State Employees Workplace Requirements Safety Program requires State agencies to establish written programs for the safety and health of State employees. The

programs must address such issues as workplace hazard recognition and control, safety training, accident investigation, and first aid. Each agency must also establish a safety committee. The safety programs and safety committees must be established in accordance with guidelines issued by the State Personnel Commission. The Office of State Personnel will continue their service of providing technical and consultative services to State agencies in the development of their programs and committees.

The Office of State Personnel will also monitor agencies' compliance with this law and report to the Joint Legislative Commission on Governmental Operations on both compliance by and the OSHA violations of State agencies. This legislation applies to State agencies without regard to their workers compensation loss experience, their workplace injury and illness incidence records, or their number of employees. This legislation does not apply to cities, counties, school units, community colleges, or other local entities. (Note, however, that a governmental entity that purchases commercial workers compensation insurance is potentially subject to the safety program and safety committee requirements under House Bill 1388.)

The resources to administer this Program are already in place in the Office of State Personnel. No additional funding was necessary for this Program.

BUILDING CODE ENFORCEMENT: House Bill 1393 (Chapter 895) clarifies that municipalities have authority to enforce the Building Code within their extraterritorial jurisdiction. The statewide fire prevention code, which became effective July 1, 1991, is a part of the Building Code. This enforcement authority is consistent with municipalities' zoning and subdivision powers in extraterritorial areas.

The bill also adds two local government representatives to the Building Code Council. In making the appointments to these two new slots, the Governor should give preference to persons licensed as engineers, general contractors, or architects. The legislation also requires the Governor, in making new appointments or filling vacancies, to ensure that minorities and women are represented on the Council.

WORKPLACE FATALITY AND INJURY REPORTS: House Bill 1392 (Chapter 894) makes data available to the Department of Labor to ensure that it has the information necessary to administer the special emphasis inspection program under House Bill 1391 and the safety committee/safety program requirements under House Bill 1388. Data collection by the Department of Labor is critical to its successful implementation of these programs.

The legislation requires certain information from the Industrial Commission, the North Carolina Rate Bureau, the Department of Insurance, and the Chief Medical Examiner to be shared with the Department of Labor. Information shared with the Department of Labor maintains the level of confidentiality to which it was entitled at the originating agency.

The Industrial Commission must provide the Department information on workers compensation claims filed by employees, including the name, address, and type of business of the employer, the date and nature of the injury or illness, and whether the employee received workers compensation benefits for the injury or illness. The North Carolina Rate Bureau must provide information on the experience modification ratings for employers and a list of employers who are in the workers compensation assigned risk pool. The Department of Insurance must provide information on self-insured employers and must require third party administrators of self-insured group plans to provide the same information. The Chief Medical Examiner must provide information on the cause and manner of work-related deaths, the name of the decedent's employer, and the location of the fatal injury. The Commissioner of Labor may also require employers to maintain records and file them with the Department at least annually on work-related deaths and serious illnesses or injuries. OSHA regulations requiring employers to promptly report workplace deaths and certain serious injuries and illnesses will continue to apply.

SAFETY PROVISIONS/STATE CONTRACTS: House Bill 1389 (Chapter 893) requires the State Building Commission to review how the State provides for safety on State construction projects. The Commission, after consultation with the Commissioner of Labor, will make recommendations to appropriate agencies on how to enhance the safety of employees on these projects. The legislation also requires contracts for State capital improvement projects to contain a clause requiring the contractor to designate a safety

officer. The safety officer's responsibility is to inspect the construction site for unsafe hazards and to report the hazards to the contractor for correction. There is no requirement that the hazard be reported to the State Building Commission, the Department of Labor, or any other third party.

The safety officer requirement is virtually identical to a condition already found in most State construction contracts. Both the safety officer clause and the State Building Commission study apply only to State construction projects costing $50,000 or more.

The legislation also requires the Governor, in making new appointments to and filling vacancies on the State Building Commission, to ensure that minorities and women are represented.

NCSU HAZARDOUS WASTE FACILITY FUNDS: Senate Bill 1205 (Chapter 1044) is the capital appropriations bill for the 1992-93 fiscal year. Included in the bill is the $2.7 million in funding that was requested for the hazardous waste facility at North Carolina State University. The proposed funding was originally contained in House Bill 1383.

The funds will be used to construct a new facility for the storage of hazardous wastes that are generated by University sources. The existing waste facility was about to lose its temporary permit to operate because of its lack of a containment system for spills.

TEXT OF ENACTED LEGISLATION

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 1021
HOUSE BILL 1394

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

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 21.
"Retaliatory Employment Discrimination.

"§ 95-240. Definitions.

The following definitions apply in this Article:

(1) 'Person' means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.

(2) 'Retaliatory action' means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment.

"§ 95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
a. Chapter 97 of the General Statutes.
b. Article 2A or Article 16 of this Chapter.
c. Article 2A of Chapter 74 of the General Statutes.

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

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

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee.

"§ 95-242. Complaint; investigation; conciliation.

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal procedures, the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 180 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the course of these informal procedures may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

"§ 95-243. Civil action.

(a) An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

(b) A civil action under this section shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued or by the Commissioner within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) The employee or the Commissioner may seek and the court may award any or all of the following types of relief:

(1) An injunction to enjoin continued violation of this Article.
(2) Reinstatement of the employee to the same position held before the retaliatory action or discrimination or to an equivalent position.
(3) Reinstatement of full fringe benefits and seniority rights.
(4) Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.

If in an action under this Article the court finds that the employee was injured by a willful violation of G.S. 95-241, the court shall treble the amount awarded under subdivision (4) of this subsection.

The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable

costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.

(e) An employee may only bring an action under this section when he has been issued a right-to-sue letter by the Commissioner.

"**§ 95-244. Effect of Article on other rights.**

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

Sec. 2. G.S. 95-130 reads as rewritten:

"**§ 95-130. Rights and duties of employees.**

Rights and duties of employees shall include but are not limited to the following provisions:

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

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

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

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

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

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

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

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

~~(9) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of (8) hereinafter mentioned may, within 30 days after such violation~~

~~occurs, file a complaint with the Commissioner alleging such discrimination. Upon receipt of such complaint, the Commissioner shall cause such investigation to be made as he deems appropriate. If the Commissioner determines that the provisions of the above subdivision have been violated, he shall bring an action against such person in the superior court division of the General Court of Justice in the county wherein the discharge or discrimination occurred. In any such action the superior court shall have jurisdiction, for cause shown to restrain violations of subdivision (8) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.~~

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

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

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

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

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

~~(b)~~ Files and other records relating to investigations and enforcement proceedings pursuant to this Article, or pursuant to Article 21 of this Chapter with respect to Wage and Hour Act violations, shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending. Nothing under this section shall impede the right to discovery under G.S. 1A-1, Rules of Civil Procedure."

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

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

"**§ 74-24.15. Rights and duties of miners.**

~~(a)~~ Miners shall comply with all safety and health standards and all rules, regulations, or orders issued pursuant to this Article which are applicable to their own actions and ~~conduct.~~ conduct and shall have the rights afforded under Article 21 of Chapter 95 of the General Statutes.

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

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

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

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

"**§ 126-86. Civil actions for injunctive relief or other remedies.**

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

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

In the General Assembly read three times and ratified this the 23rd day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 924
HOUSE BILL 1391

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State departments, divisions, boards, commissions, and other State entities. The Department shall ensure that every employer targeted for a special emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and health compliance and enforcement."

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

In the General Assembly read three times and ratified this the 10th day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 1020
HOUSE BILL 1386

AN ACT TO PERMIT THE COMMISSIONER OF LABOR TO IMPOSE PENALTIES AGAINST PUBLIC AGENCIES FOR OSHA VIOLATIONS AND TO REQUIRE LOCAL GOVERNMENTAL UNITS TO REPORT OSHA CITATIONS TO THEIR GOVERNING BOARDS.

The General Assembly of North Carolina enacts:

Section 1. 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.

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

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

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

Sec. 2. G.S. 95-137(a) reads as rewritten:

"(a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this Article, or has violated any standard, regulation, rule or order promulgated under this Article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or ~~health, and violations of State agencies or political subdivisions thereof~~ health. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred."

Sec. 3. G.S. 95-137(b) is amended by adding a new subdivision to read:

"(6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes."

Sec. 4. This act is effective upon ratification and applies to violations occurring on or after that date, except that fines levied pursuant to G.S. 95-138 against units of local government shall be assessed only for violations occurring on or after January 1, 1993.

In the General Assembly read three times and ratified this the 23rd day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 900
HOUSE BILL 1340

AN ACT TO MODIFY THE APPROPRIATIONS AND BUDGET REVENUE ACT OF 1991, AS AMENDED, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

Sec. 2. This act shall be known as "The Current Operations Appropriations Act of 1992."

PART 1. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/STATE GOVERNMENT

Sec. 3. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal year ending June 30, 1993, according to the schedule that follows. The amounts set out in the schedule are in addition to other appropriations from the General Fund for these purposes for the 1992-93 fiscal year. Amounts set out in brackets are reductions from General Fund appropriations for the 1992-93 fiscal year.

Current Operations/State Government	1992-93
Department of Labor	3,700,602

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 1008
HOUSE BILL 1395

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 FILE A REPORT WITH THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

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

(1) The Commissioner of Labor, who shall also chair the Task Force.
(2) The Commissioner of Insurance or a designee.
(3) The Secretary of the Department of Environment, Health, and Natural Resources or a designee.
(4) The Chairman of the Industrial Commission or a designee.
(5) The Chairman of the Public Utilities Commission or a designee.
(6) The Secretary of the Department of Transportation or a designee.
(7) The Chairman of the State Personnel Commission or a designee.
(8) A community college representative appointed by the President of the North Carolina System of Community Colleges.
(9) Two local officials, one selected by the North Carolina League of Municipalities and the other selected by the North Carolina Association of County Commissioners.
(10) One employee selected by the Speaker of the House of Representatives from a list of recommendations submitted by the AFL-CIO and one business owner selected by the President Pro Tempore of the Senate from a list of recommendations submitted by the North Carolina Citizens for Business and Industry.

The Task Force shall submit an interim written report to the LRC Study Committee on Fire and Occupational Safety at Industrial and Commercial Facilities no later than October 1, 1992, and a final report to the members of the General Assembly by March 1, 1993. The report shall recommend a proposed reorganization of the occupational health and safety and fire safety network within State and local government to better address the needs of employers and employees in this State. Except for cause, the same designee shall serve from the inception of the Task Force until the issuance of the final report.

The proposed reorganization should accomplish the following goals:

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

The Department of Labor shall provide clerical and professional assistance to the Task Force. Members of the Task Force shall serve without compensation or reimbursement.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, Jr.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 962
HOUSE BILL 1388

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

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 22.
"Safety and Health Programs and Committees.

"**§ 95-250. Definitions.**

The following definitions shall apply in this Article:

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

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

The definitions of Article 16 of this Chapter shall also apply to this Article, except that 'employee' for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256 means an employee employed for some portion of a working day in each of 20 or more calendar weeks in the current or preceding calendar year.

"**§ 95-251. Safety and health programs.**

(a) Establishment of safety and health programs.

(1) Except as provided in subdivision (2) of this subsection, each employer with an experience rate modifier of 1.5 or greater shall, in accordance with this section, establish and carry out a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to employees.

(2) Employers with an experience rate modifier of 1.5 or greater which provide temporary help services shall, in accordance with this section, establish and implement a safety and health program to reduce or eliminate hazards and to prevent injuries and illnesses to its full-time employees permanently located at the employer's worksite. Employers which provide temporary help services shall not be required to establish and implement a safety and health program under this section for its employees assigned to a client's worksite. This subdivision shall not apply to employee leasing companies.

(3) The Commissioner may modify the application of the requirements of this section to classes of employers where the Commissioner

determines that, in light of the nature of the risks faced by the employees of these employers, such a modification would not reduce the employees' safety and health protection.

(b) Safety and health program requirements. A safety and health program established and implemented under this section shall be a written program that shall include at least all of the following:

(1) Methods and procedures for identifying, evaluating, and documenting safety and health hazards.

(2) Methods and procedures for correcting the safety and health hazards identified under subdivision (1) of this subsection.

(3) Methods and procedures for investigating work-related fatalities, injuries, and illnesses.

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

(5) Methods and procedures for employee participation in the implementation of the safety and health program.

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

(7) Methods and procedures for providing safety and health training and education to employees and to members of any safety and health committee established under G.S. 95-252.

(8) The designation of a representative of the employer who has the qualifications and responsibility to identify safety and health hazards and the authority to initiate corrective action where appropriate.

(9) In the case of a worksite where employees of two or more employers work, procedures for each employer to protect employees at the worksite from hazards under the employer's control, including procedures to provide information on safety and health hazards to other employers and employees at the worksite.

(10) Any other provisions as the Commissioner requires to effectuate the purposes of this section.

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

"**§ 95-252. Safety and health committees required.**

(a) Establishment of safety and health committees. Except as provided in subsection (b) of this section, each employer with 11 or more employees and an experience rate modifier of 1.5 or greater shall provide for the establishment of safety and health committees and the selection of employee safety and health representatives in accordance with this section.

(b) Temporary help services. Temporary employees of employers which provide temporary help services shall not be counted as part of the 11 or more employees needed to establish a safety and health committee under this section, and employers which provide temporary help services shall not be required to establish a safety and health committee under this section for its employees assigned to a client's worksite. This subsection shall not apply to employee leasing companies.

(c) Safety and health committee requirements.

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

a. An employer covered by this section 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 employer'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.

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

a. The employee safety and health representatives selected or appointed under subsection (d) of this section.

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.

b. A representative selected by the employee members of the committee.

(4) Rights. Each safety and health committee shall, within reasonable limits and in a reasonable manner, exercise the following rights:

a. Review any safety and health program established by the employer under G.S. 95-251.

b. Review incidents involving work-related fatalities, injuries and illnesses, and complaints by employees regarding safety or health hazards.

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 personally identifiable medical information, and other reports or documents relating to occupational safety and health.

d. Conduct inspections of the worksite at least once every three months and in response to complaints by employees or committee members regarding safety or health hazards.

e. Conduct interviews with employees in conjunction with inspections of the worksite.

f. Conduct meetings, at least once every three months, and maintain written minutes of the meetings.

g. Observe the measurement of employee exposure to toxic materials and harmful physical agents.

h. Establish procedures for exercising the rights of the committee.

i. Make recommendations on behalf of the committee, and in making recommendations, permit any members of the committee to submit separate views to the employer for improvements in the employer's safety and health program and for the correction of hazards to employee safety or health, except that recommendations shall be advisory only

and the employer shall retain full authority to manage the worksite.

j. Accompany, upon request, the Commissioner or the Commissioner's representative during any physical inspection of the worksite.

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

(d) Employee safety and health representatives.

(1) In general. Safety and health committees established under this section shall include:

a. One employee safety and health representative where the average number of nonmanagerial employees of the employer at the worksite during the preceding year was more than 10, but less than 50.

b. Two employee safety and health representatives where the average number of nonmanagerial employees of the employer at the worksite during the preceding year was 50 or more, but less than 100.

c. An additional employee safety and health representative for each additional 100 such employees at the worksite, up to a maximum of six employee safety and health representatives.

d. Where an employer's employees do not primarily report to or work at a fixed location or at worksites where employees of more than one employer are employed, a number of employee safety and health representatives as determined by the Commissioner by rule.

(2) Selection. Employee safety and health representatives shall be selected by and from among the employer's nonmanagerial employees in accordance with rules adopted by the Commissioner. The rules adopted by the Commissioner may provide for different methods of selection of employee safety and health representatives at worksites with no bargaining representative, worksites with one bargaining representative, and worksites with more than one bargaining representative.

"**§ 95-253. Additional rights.**

The rights and remedies provided to employees and employee safety and health representatives under this Article are in addition to, and not in lieu of, any other rights and remedies provided by contract or by other applicable law and are not intended to alter or affect those other rights and remedies.

"**§ 95-254. Rules.**

(a) Safety and health programs. Not later than one year after the effective date of this Article, the Commissioner shall adopt final rules concerning the establishment and implementation of employer safety and health programs under G.S. 95-251. Rules adopted shall include provisions for the training and education of employees and safety and health committee members. These rules shall include at least all of the following:

(1) Provision for the training and education of employees, including safety and health committee members, in a manner that is readily understandable by the employees, concerning safety and health

hazards, control measures, the employer's safety and health program, employee rights, and applicable laws and regulations.

(2) Provision for the training and education of the safety and health committee concerning methods and procedures for hazard recognition and control, the conduct of worksite safety and health inspections, the rights of the safety and health committee, and other information necessary to enable the members to carry out the activities of the committee under G.S. 95-252.

(3) Requirement that training and education be provided to new employees at the time of employment and to safety and health committee members at the time of selection.

(4) Requirement that refresher training be provided on at least an annual basis and that additional training be provided to employees and to safety and health committee members when there are changes in conditions or operations that may expose employees to new or different safety or health hazards or when there are changes in safety and health rules or standards under Article 16 of this Chapter that apply to the employer.

(b) Safety and health committees. Not later than one year after the effective date of this Article, the Commissioner shall adopt final rules for the establishment and operation of safety and health committees under G.S. 95-252. The rules shall include provisions concerning at least the following:

(1) The establishment of such committees by an employer whose employees do not primarily report to or work at a fixed location.

(2) The establishment of committees at worksites where employees of more than one employer are employed.

(3) The employer's obligation to enable the committee to function properly and effectively, including the provision of facilities and materials necessary for the committee to conduct its activities, and the maintenance of records and minutes developed by the committee.

(4) The provision for different methods of selection of employee safety and health representatives at worksites with no bargaining representative, worksites with one bargaining representative, and worksites with more than one bargaining representative.

"**§ 95-255. Reports.**

(a) Upon the final adoption of all rules required to be adopted by the Commissioner under this Article, the Commissioner shall determine, based on information provided by the North Carolina Rate Bureau, the employers with an experience rate modifier of 1.5 or greater and shall notify these employers of the applicability of G.S. 95-251 and the potential applicability of G.S. 95-252.

(b) Within 60 days of notification by the Commissioner, the employer shall certify on forms provided by the Commissioner that he meets the requirements of G.S. 95-251 and, if applicable, the requirements of G.S. 95-252.

(c) The Commissioner shall notify an employer when his experience rate modifier falls below 1.5. An employer subject to the provisions of G.S. 95-252 shall notify the Commissioner if he no longer employs 11 or more employees and has discontinued or will discontinue the safety and health committee.

"**§ 95-256. Penalties.**

(a) The Commissioner may levy a civil penalty, not to exceed the amounts listed as follows, for a violation of this Article:

Employers with 10 or less employees	$ 2,000
Employers with 11-50 employees	$ 5,000

Employers with 51-100 employees	$10,000
Employers with more than 100 employees	$25,000.

(b) The Commissioner, in determining the amount of the penalty, shall consider the nature of the violation, whether it is a first or subsequent violation, and the steps taken by the employer to remedy the violation upon discovery of the violation.

(c) An employer may appeal a penalty levied by the Commissioner pursuant to this section to the Safety and Health Review Board subject to the procedures and requirements applicable to contested penalties under Article 16 of this Chapter. The determination of the Board shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes.

(d) All civil penalties and interest recovered by the Commissioner, together with any costs, shall be paid into the General Fund of the State."

Sec. 2. This act is effective upon ratification, provided that all provisions requiring employer compliance apply only upon the effective date of the rules adopted by the Commissioner of Labor pursuant to this act.

In the General Assembly read three times and ratified this the 15th day of July, 1992.

HENSON P. BARNES

Henson P. Barnes
President Pro Tempore of the Senate

DANIEL BLUE, JR

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 994
HOUSE BILL 1390

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 63.
"State Employees Workplace Requirements Program
for Safety and Health.

"§ 143-580. Definition.

As used in this Article, 'State agency' means any department, commission, division, board, or institution of the State within the executive branch of government and the Office of Administrative Hearings.

"§ 143-581. Program goals.

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.

"§ 143-582. 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 of retaliation.

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

"**§ 143-583. Model program; technical assistance; reports.**

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

(1) Maintain a model program of safety and health requirements to guide State agencies in the development of their individual programs and in complying with the provisions of G.S. 95-148 and this Article.

(2) Establish guidelines for the creation and operation of State agency safety and health committees.

(b) The Office of State Personnel shall:

(1) Provide consultative and technical services to assist State agencies in establishing and administering their workplace safety and health programs and to address specific technical problems.

(2) Monitor compliance with this Article.

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

"**§ 143-584. State agency safety and health committees.**

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

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

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

Sec. 3. The Legislative Services Commission and the Administrative Office of the Courts are authorized to separately establish safety and health programs for their employees. The Administrative Office of the Courts shall report annually to the Joint Legislative Commission on Governmental Operations on its safety and health activities with respect to its program.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of July, 1992.

HENSON P. BARNES

Henson P. Barnes
President Pro Tempore of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 895
HOUSE BILL 1393

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

The General Assembly of North Carolina enacts:

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

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

"(a) Creation; Membership; Terms. -- There is hereby created a Building Code Council, which shall be composed of ~~13~~ 15 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing

electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, one licensed liquid petroleum gas dealer/contractor involved in the design of natural and liquid petroleum gas systems who has expertise and experience in natural and liquid petroleum gas piping, venting and appliances, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of State-owned buildings, a municipal elected official or city manager, a county commissioner or county manager, and an active member of the North Carolina fire service with expertise in fire safety. In selecting the municipal and county members, preference should be given to members who qualify as either a registered architect, registered engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Council.

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

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 894
HOUSE BILL 1392

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.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-143 reads as rewritten:

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

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

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this Article as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this Article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this Article, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make ~~periodic~~ reports at least annually 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.

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

safety and health standard promulgated under this Article and shall inform any employee who is being thus exposed of the corrective action being taken.

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

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

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

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

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

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

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

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

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

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

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

(1) Name and business address of the employer;
(2) Type of business of the employer;
(3) Date the accident, illness, or injury occurred;
(4) Nature of the injury or disease reported; and
(5) Whether compensation for disability or medical expenses was paid to the injured employee.

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

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

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

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

"**§ 58-36-16. Bureau to share information with Department of Labor.**

The Bureau shall provide to the Department of Labor information from the Bureau's records indicating each employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information provided to the Department of Labor with respect to experience rate modifiers shall include the name of the employer and the employer's most current intrastate or interstate experience rate modifier. The information provided to the Department under this section shall be confidential and not open for public inspection. The Bureau shall be immune from civil liability for erroneous information released by the Bureau pursuant to this section, provided that the Bureau acted in good faith and without malicious or wilful intent to harm in releasing the erroneous information."

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

"**§ 58-2-230. Commissioner to share information with Department of Labor.**

The Commissioner shall provide or cause to be provided to the Department of Labor, on an annual basis, the name and business address of every employer that is self-insured for workers' compensation. Information provided or caused to be provided by the Commissioner to the Department of Labor under this section is confidential and not open for public inspection under G.S. 132-6."

Sec. 6. G.S. 130A-385 is amended by adding a new subsection to read:

"(e) In cases where death occurred due to an injury received in the course of the decedent's employment, the Chief Medical Examiner shall forward to the Commissioner of Labor a copy of the medical examiner's report of the investigation, including the location of the fatal injury and the name and address of the decedent's employer at the time of the fatal injury. The Chief Medical Examiner shall forward this report within 30 days of receipt of the information from the medical examiner."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 893
HOUSE BILL 1389

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.

The General Assembly of North Carolina enacts:

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

"**§ 143-135.26. Powers and duties of the Commission.**

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

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

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

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

(3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects.

(5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.

(6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.

(7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its ~~work.~~ work; and

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

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

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

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

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

(1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.

(2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC

(Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.

(5) A public member appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.

(8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(9) A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

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

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

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

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

"**§ 143-135.7. Safety officers.**

Each contract for a State capital improvement project, as defined in Article 8B of this Chapter, shall require the contractor to designate a responsible person as safety

officer to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract."

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

In the General Assembly read three times and ratified this the 8th day of July, 1992.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991
RATIFIED BILL

CHAPTER 1044
SENATE BILL 1205

AN ACT TO MODIFY THE CAPITAL IMPROVEMENTS APPROPRIATIONS FOR NORTH CAROLINA FOR THE 1992-93 FISCAL YEAR, TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, AND TO MAKE TECHNICAL CORRECTIONS NECESSARY TO EFFECT THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

PART 1. INTRODUCTION

Section 1. The appropriations made by the 1992 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

PART 2. TITLE

Sec. 2. This act shall be known as "The Capital Improvements Appropriations Act of 1992".

University Board of Governors (Total)	40,202,300
1. North Carolina State University	
a. Centennial Center-Restore Funds for Site Preparation	2,000,000
b. Hazardous Waste Facility	2,722,300
c. Engineering Graduate Research Center - Phase I	2,200,000
d. Castle Hayne Horticultural Research Station-Restore Funds for Greenhouse and Support Facility	350,000
e. 4-H Camps-Repairs and Renovations	200,000