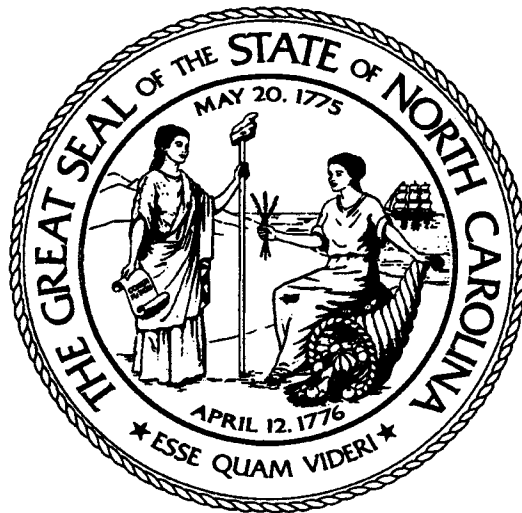


**LEGISLATIVE
RESEARCH COMMISSION**

MOUNTAIN AREA STUDY COMMITTEE



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL..... i

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP..... ii

PREFACE..... 1

COMMITTEE PROCEEDINGS..... 3

FINDINGS AND RECOMMENDATIONS.....13

APPENDICES

RELEVANT PORTIONS OF UNRATIFIED H.B. 1319 (2ND EDITION)
OF THE 1993 SESSION, THE STUDIES BILL.....A-1

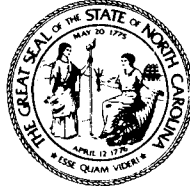
RELEVANT PORTIONS OF SENATE BILL 86 OF THE 1993
SESSION.....A-2

MEMBERS OF THE MOUNTAIN AREA LRC STUDY COMMITTEE... ..B-1

LEGISLATIVE PROPOSAL 1
A BILL TO BE ENTITLED AN ACT TO PRESERVE THE SCENIC BEAUTY
AND CULTURAL HERITAGE OF THE NORTH CAROLINA MOUNTAINS
THROUGH INCENTIVE-BASED COUNTY PLANNING AND LAND USE
MANAGEMENT AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF
COMMERCE FOR FUNDING INCENTIVES TO MOUNTAIN AREA COUNTIES
THAT ADOPT PLANS AND ORDINANCES BASED ON THE STATE MODEL
LAND USE GUIDANCE SYSTEM
With Section-by-section AnalysisC-1

LEGISLATIVE PROPOSAL 2
A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN NORTH
CAROLINA MOUNTAIN COUCNTIES WHICH IMPLEMENT THE STATE MODEL
COUNTY PLANNING AND LAND USE MANAGEMENT ORDINANCE FROM
STATE WATER SUPPLY WATERSHED LAWS AND REGULATIONS
With Section-by-section Analysis... ..D-1

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



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on Mountain Area Management, with the exception of Legislative Proposal #2, pertaining to exempting mountain area counties from State water supply watershed laws and regulations, and all matters relating thereto, which were deleted by action of the Legislative Research Commission on this date. The report was prepared by the Legislative Research Commission's Mountain Area Study Committee pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan Blue".

Daniel T. Blue, Jr.
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight".

Marc Basnight
President Pro Tempore

Cochairmen
Legislative Research Commission



1993-1994

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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the Senate
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PREFACE

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

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the Mountain Area would have been authorized by Section 8 of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider Senate Bill 86 in determining the nature, scope and aspects of the study. The relevant portions of the 2nd Edition of House Bill 1319 and Senate Bill 86 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its Environmental Grouping under the direction of Senator Lura S. Tally. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters).

The Committee was chaired by Senator Herbert L. Hyde and Representative Narvel J. Crawford. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Mountain Area Study Committee of the Legislative Research Commission (LRC) met four times before making its final recommendations.

Meeting of May 5, 1994

The Mountain Area LRC Study Committee held its first meeting on May 5, 1994. The first order of business was to examine the enabling legislation, Senate Bill 86, sponsored by Senators Hyde, Plexico, and Simpson, which proposed continuing the former 1991-1992 Mountain Area Study Commission. Senator Hyde explained that the continuation bill was part of the unratified studies bill, resulting in the Legislative Research Commission's authorization of the 1993-1994 Mountain Area Study under its auspices.

The second order of business was to review the Final Report of the 1991-1992 Mountain Area Study Commission and to discuss the possibility of submitting a Committee Report to the 1994 General Assembly. The Committee heard a summary of the 1993 Final Report of the former Mountain Area Study Commission, including a summary of the conclusions and goals found in the 1993 Final Report. Highlights of the 1993 Final Report were presented as follows:

1. The 1991 General Assembly authorized the Commission to determine the future consequences of present land use practices in the mountain area and to determine whether increased management of land resources would be advisable for the mountain area.
2. The Commission was charged with examining how responsibility for increased land use management should be allocated among levels of government, if increased land use management was found to be necessary.
3. An organizational meeting held in Raleigh began with the presentation of the history of the State's involvement in local and

regional planning and an overview of what other state's have implemented with regard to planning and land use management. The Commission then went into a Joint Meeting with the Statewide Comprehensive Planning LRC Study Committee that focused on regional and statewide planning. There was a presentation by the North Carolina Division of Community Assistance pertaining to the current status of local and regional planning in the state.

4. A meeting and Public Hearing was held in Cullowhee in conjunction with the Statewide Comprehensive Planning LRC Study. The Commission heard from two presenters from Georgia who were instrumental in establishing and implementing Georgia's comprehensive statewide planning process. There was also a panel presentation that included a representative from the Town of Canton, the Jackson County Planner, the Swain County Planner, the Swain County Administrator, the Haywood County Planner, a Macon County Commissioner, and representatives from the UNC Institute of Government and the Division of Community of Assistance of the Department of Commerce. Public comments were heard from those for and against land use regulation.
5. The Boone meeting and Public Hearing included a panel presentation by representatives of the Appalachian State University Geography Department, Watauga Planning Department, Wilkes County Planning Department, and also the Mayor of Banner Elk. The Commission heard from local residents who offered their comments, both for and against, regarding planning and increase land use management in the mountain area.
6. The Asheville meeting and Public Hearing included a presentation from a representative of the North Carolina Department of Environment, Health and Natural Resources as well as a panel presentation including a local realtor, a member of the Hendersonville Planning Board, a member of the Asheville Planning

Department, and the Director of Environmental Programs for the Land-of-Sky Regional Council.

7. The Commission decided upon its final recommendations and conclusions at the January 15, 1994, meeting held in Raleigh, which were summarized as follows:
 - a. The work of the Mountain Area Study should continue and sufficient funds should be appropriated to continue its work.
 - b. The continuation of the Commission's work should include the following:
 - Further review of current laws regulating land uses in the mountain area.
 - Further review of planning models from other states.
 - Development of voluntary planning guides and models geared to the special needs of the mountain region.
 - Development of voluntary planning guidelines and models that include options for a locality to accept, modify, or reject the models developed.
 - Review of the procedure that should be followed in adopting local planning, e.g. whether local referenda on planning and increased land use management should be authorized.
 - Review of the kinds of technical assistance that will be needed by communities for planning, e.g. geographical information systems, etc.
 - Development of incentives that can be used to promote and encourage local planning.

In addition to reviewing the work of the previous Mountain Area Study Commission, as outlined above, the Committee received a brief report on the work of the former Statewide Comprehensive Planning LRC Study Committee. That former study was reconstituted in 1993 as the Partnership for Quality Growth LRC Study Committee.

The Chair emphasized that the Mountain Area LRC Study Committee should not unduly interfere with the work of the Partnership for Quality Growth Study that was charged with studying statewide planning, given that the other group's work would also encompass the mountain region. It was the consensus that the Mountain Area LRC Study Committee focus on the needs of the mountain area as it had been charged to do, while staying mindful of the work of the statewide planning study committee.

The Committee decided not to submit an interim report to the Legislative Research Commission. The Committee decided to continue meeting after the 1994 Short Session and to submit a Final Report to the 1995 General Assembly. The Committee decided to receive an overview of the Georgia planning laws at its next meeting, noting that the planning scheme in place in Georgia warranted review. The Chair suggested that the Committee also consider reviewing the ramifications of water supply protection in the mountain area and how watershed laws and regulations affect the mountain area.

With regard to other business, the Committee was invited to preview a documentary film examining the effects of air pollution and acid rain on forests, streams, and human health which focuses on Grandfather Mountain. Committee Member Hugh Morton stated that the documentary was the culmination of a 3 year project. The documentary was to be presented at the UNC Public Television Studios located in the Research Triangle Park.

Meeting of September 23, 1994

The second meeting the Mountain Area LRC Study Committee was held on September 23, 1994. The primary purpose of the meeting was to hear a detailed presentation by Mr. Mike Gleaton, of the Georgia Department of Community Affairs, on the specifics of the Georgia comprehensive planning act.

Mr. Gleaton summarized the historical background leading up to development of the Georgia planning scheme. The "home rule" constitutional environment in Georgia means that the state cannot require cities or counties to implement a planning ordinance. Therefore, the Georgia legislation was designed to allow the state to

influence local government activities by requiring the counties and cities to report to the state their growth plan as a requirement of eligibility for state and federal funds. It was emphasized that through this plan the state could assist the counties and cities in implementation of the local planning effort while ensuring the local plans were "logical and doable". Local governments decide for themselves when to amend or update the local plan in order to respond to changing local and regional conditions.

Mr. Gleaton explained that the Office of the Georgia Department of Community Affairs was established as a liaison between the state and local governments for administration of grant-in-aid programs and technical assistance. Technical information and computer system programs directly interface with local government systems as an aid to the localities. Information sharing between the state and the localities has been a major element leading to the success of the Georgia comprehensive planning process. The state provides counties and cities with individualized informational data and documentation to be used in formulating each local government's plan, thus enabling a responsible set of local officials to take the appropriate action to protect their area. Mr. Gleaton discussed the importance of local government cooperation in following through on local implementation.

Mr. Gleaton explained that the Georgia planning act included very detailed planning criteria to serve as the guide for what is to be addressed and included in the various local plans. For example, the planning system guidelines include explicit environmental planning criteria regarding the water supply watersheds, wetlands, and groundwater recharge areas.

Even though Georgia's base planning standards provide the minimum of what a local plan must contain, the local planning process is "value driven." For example, the state does not tell a local government how to deal with affordable housing in its community, but requires the local government to recognize the issue and study the statistics to see if there is a problem in that specific area and submit its plan to deal or not to deal with the specific issue. This guards against local governments failing to address all the important issues in their jurisdiction. If a locality fails to address the minimum planning standards, the state will find the plan deficient and will require the local government to specifically address the issues that were not adequately examined by the local government.

Under the Georgia model, local governments must disclose their intentions regarding local resources and planning issues, with the option that the local government may chose to act or not to act on a specific issue. For example, a local government with a protected mountain in its area is required to disclose its official intention on how it intends to protect that mountain or not protect that mountain. The local community is "free to make that choice, but not free from that choice." The local planning process results in a great deal of discretion being given to local governments. The process also means that the community will be well informed about the choices for which the local officials can be held accountable.

At the conclusion of Mr. Gleaton's prepared presentation, the Committee engaged in a discussion of different features of the Georgia planning system, including discussion of ways in which differences and similarities between Georgia and North Carolina might affect the success of a similar plan in North Carolina for the benefit of the mountain area.

The Committee also received information and comments concerning the development of the Land Use Guidance System (LUGS) model for planning and land use management in Western North Carolina. Mr. Bob Frye of the Region B Council of Governments explained that Allegheny County has been working on the LUGS model, noting this program evolved from a hazardous waste incinerator situation. Mr. Frye stated that, essentially, Allegheny County had been anti-zoning and did not want additional controls placed upon residents. But, the incinerator situation helped to bring the realization that there might be a need for some sort of local land use control and planning that would not necessary require zoning. The LUGS plan, based on a system used in Virginia, became their model. Mr. Frye informed the Committee that the LUGS model has been studied for 3 years and will be tested before going county-wide within the next 8 months.

It was noted that the Land Use Guidance System differs from basic zoning in that it is a "bottom up" program that is community driven. For example, if a property owner wanted to put a small business or a convenience center or a deck on his or her property, the person would confer with local citizens who live in the area, who would

gather in a manner similar to a town meeting. The ultimate decision would be made by the county.

It was learned that the Region B Council of Governments and the other four Councils of Government in Western North Carolina, in conjunction with the Center for Improvement of Mountain Living at Western Carolina University, and Appalachian State University, have all been involved in the development of local planning initiatives. A meeting in Asheville on the topic was upcoming. It was noted that the meeting would cover a broad range of issues, from solid waste to water quality planning. An invitation to attend was extended to the Committee members.

Senator Hyde noted that the Land Use Guidance System model had been explained at a previous meeting of the Committee. Mr. Morton stated he had visited Bedford County, Virginia, where LUGS was developed and has been implemented. He attended one of the town planning meetings and heard "enthusiastic testimony on its workability." Senator Hyde asked Mr. Morton if he thought "the key to its success is people getting together and sitting down and talking and cooperating." Mr. Morton stated he did believe that to be the key to success.

The Committee had further discussion on the importance of using a "bottom up" approach for any type of local planning, instead of creating an unnecessary bureaucracy. It was stressed that any planning initiative should be voluntary, with incentives for a jurisdiction to engage in local planning.

The Commission also discussed problems related to the myriad of permits required for development, noting that it would be beneficial to have a system where permits come under one umbrella rather than having several different agencies involved with the so many different permits. The Committee discussed the possibility of recommending establishment of a "one-stop" permit clearinghouse. In addition, the Committee decided to transmit a summary of its deliberations to the Partnership for Quality Growth LRC Study Committee so that the group studying statewide planning would be informed of the issues being discussed by the Committee.

Meeting of December 16, 1994

At the Committee's third meeting Senator Hyde was given the floor to discuss a proposal for voluntary, incentive based county planning. He referred to the State of Georgia plan which had been explained to the committee on two previous occasions, noting that this proposed plan was different due to the local and state governmental differences between North Carolina and Georgia.

Senator Hyde proceeded to explain that his proposal would use the Land Use Guidance System, as incorporated by Burke County county, as a model for mountain area counties in developing a comprehensive county land use plan and adopting a land use management ordinance. The proposal included making an appropriation of funds that would be, as an incentive, granted to counties which choose to adopt plans and ordinances using the State model. It was noted that under the General Statutes, counties are already empowered to adopt such ordinances. If a county adopts or considers adopting a comprehensive county plan and land use management ordinance by a certain date, the county would be granted the money to proceed with implementation of local planning. If a county agrees to a plan and goes on to adopt an ordinance, then the county will receive other additional monies for such purposes as infrastructure development. However, if a county does not adopt a plan, the county would not get the additional money. In the case of a county that chooses to do nothing, the county will receive only a small percentage of State funding that the county would ordinarily receive for infrastructure. For counties that have already implemented planning ordinances, those counties would have incentives to update or modify their ordinances to conform to the LUGS-based State model in that those counties that conform existing ordinances to the State model will be eligible for funds for planning and infrastructure monies as well.

Senator Hyde stated that the key features of mountain area county comprehensive planning would include permit granting authority of some kind, saying that the strength of ordinances adopted may vary. Senator Hyde stressed that the vested rights of persons arising in the permitting process must be protected and that there should be a hearing and appeals process to protect the rights of citizens.

Senator Hyde referenced the disagreement last session over the water supply watershed protection act and cited the exemption for Buncombe County which he had obtained. Sen. Hyde's proposed plan included a provision that counties which opt into local planning using the LUGS-based model would be exempt the State's water supply watershed laws if the county land use management ordinance adequately takes into consideration the unique features relative to land elevation, slope, streams, waterfalls, plants, and wildlife. Senator Hyde further stated that his initial proposed bill draft was not the final version and the draft would require additional work to fully formulate the proposal.

Representative Crawford opened the floor for questions and discussion. There was extensive discussion of the proposed legislation outlined by Senator Hyde, including discussion of whether there should be two separate legislative proposals with one proposal containing the provision allowing mountain counties to opt out of State water supply watershed regulations and the other proposal containing only the LUGS-based planning model with incentives and an appropriation for comprehensive county planning. The proposal as initially drafted by Senator Hyde included all of those features together as one piece of legislation. Given the various considerations raised, the Committee determined that it would be best to separate the water supply watershed exemption from the LUGS planning initiative.

In addition to recommending legislation to establish the LUGS model as the comprehensive county planning model for the mountain area, Senator Hyde also proposed that the Committee make two recommendations to the 1995 General Assembly without proposing specific legislation. It was proposed that the Committee recommend that the General Assembly petition the Congress of the United States to pass legislation that would stop out-of-state emissions of chemicals which are born by wind into North Carolina and kill forests and other vegetation in the mountain area. The other proposal was that the Committee recommend establishment of a State clearinghouse to provide one umbrella for licensing and permitting as such relate to the environment and land use within the State.

Meeting of December 29, 1994

The Committee met to consider two legislative proposals to the 1995 General Assembly. The first legislative proposal was to allow the creation of an incentive-based initiative for comprehensive county planning in the mountain area that would be based on the Land Use Guidance System (LUGS) and would include the voluntary development of county plans and the adoption of county land use management ordinances based upon the LUGS model. The second legislative proposal to the 1995 General Assembly was to allow mountain area counties that adopt comprehensive county plans and ordinances the option to use their local ordinances for watershed protection in place of the Water Supply Watershed Protection Act.

After discussion, the Committee voted to recommend to the 1995 General Assembly Legislative Proposal #1. "A BILL TO BE ENTITLED AN ACT TO PRESERVE THE SCENIC BEAUTY AND CULTURAL HERITAGE OF THE NORTH CAROLINA MOUNTAINS THROUGH INCENTIVE-BASED COUNTY PLANNING AND LAND USE MANAGEMENT AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF COMMERCE FOR FUNDING INCENTIVES TO MOUNTAIN AREA COUNTIES THAT ADOPT PLANS AND ORDINANCES BASED ON THE STATE MODEL LAND USE GUIDANCE SYSTEM," and Legislative Proposal #2, "A BILL TO BE ENTITLED AN ACT TO EXEMPT CERTAIN NORTH CAROLINA MOUNTAIN COUNTIES WHICH IMPLEMENT THE STATE MODEL COUNTY PLANNING AND LAND USE MANAGEMENT ORDINANCE FROM STATE WATER SUPPLY WATERSHED LAWS AND REGULATIONS."

The Committee voted to request that Representative Arnold; and Senators Carpenter, Kincaid, Plexico, and Simpson, introduce Legislative Proposal #1 and Legislative Proposal #2 during the 1995 General Assembly.

Further, the Committee members resolved to cooperate in seeking the passage of the Legislative Proposals and to advocate for future study of the North Carolina mountain area.

FINDINGS AND RECOMMENDATIONS

The Legislative Research Commission's Mountain Area Study Committee makes the following findings and recommendations based upon the presentations, information, and public comments received by the Committee.

Incentive-Based Planning. The Mountain Area LRC Study Committee has reviewed the Georgia comprehensive planning and growth management model. The Georgia model includes funding incentives for local governments which follow certain planning guidelines. Local governments that fail to follow planning guidelines and fail to make planning decisions are rendered ineligible for certain State grant funds. The feasibility of, and need for, voluntary incentive-based planning geared to the special needs of the mountain region has been clearly established.

The Committee finds that there are significant differences between governmental roles in North Carolina and Georgia which render the Georgia scheme less than optimal for the mountain area. However, the Committee finds that the underlying incentive-based element of the Georgia model would be beneficial to the establishment and implementation of comprehensive county planning in Western North Carolina.

The Committee finds that the Land Use Guidance System model for county comprehensive planning is the appropriate model for the mountain area when coupled with incentives for planning.

Uniqueness of the Mountain Area. The Committee finds that planning and growth in Western North Carolina deserve special attention because of the uniqueness of the mountain area. Any statewide planning or growth strategies effort should take into account the uniqueness of the mountain area.

Clearinghouse Concept for State Permits. The Committee has discussed concerns related to the fact that State permits relating to development are not

handled under "one umbrella," and has also discussed the concept of a "clearinghouse" for one-stop permitting. This is the type of innovation that might well serve the entire State and not only Western North Carolina. Therefore, this appears to be a matter that may be relevant to the work of the Partnership for Quality Growth Study as well. Legislation enacted on a statewide basis to consolidate licensing or permitting functions could result in a more efficient development process and might provide for a permitting process that could be inter-related with statewide or regional planning. In addition, a permitting clearinghouse would allow for better communication between State agencies.

Year of the Mountains. The Committee recommends that the General Assembly adequately fund the State's observance of "The Year of the Mountains."

Legislative Proposals. The Committee recommends two specific pieces of legislation to the 1995 General Assembly. Legislative Proposal #1 creates an incentive-based, voluntary land use management program for the mountain area counties that will be based upon the Land Use Guidance System (LUGS) model. Legislative Proposal #2 allows counties which adopt the State LUGS-based planning model to opt out of coverage under the Water Supply Watershed Protection Act.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

" . . . (8) Mountain Area Study (H.B. 117 - Crawford, S.B. 85 - Hyde) . . . "

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 86*

Short Title: Mountain Area Study Continued.

(Public)

Sponsors: Senators Hyde, Plexico, and Simpson.

Referred to: Rules and Operation of the Senate.

February 9, 1993

A BILL TO BE ENTITLED

1 AN ACT TO CONTINUE AND EXPAND THE CHARGE OF THE
2 MOUNTAIN AREA STUDY COMMISSION.

3 The General Assembly of North Carolina enacts:

4 Section 1. The Mountain Area Study Commission is created. The
5 Commission shall consist of 15 members: four Senators appointed by the
6 President Pro Tempore of the Senate, four Representatives appointed by the
7 Speaker of the House of Representatives, three members representing local
8 government and the public sector appointed by the President Pro Tempore of
9 the Senate, three members representing local government and the public sector
10 appointed by the Speaker of the House of Representatives, and one member to
11 be chosen by the other 14 members of the Commission.

12 Sec. 2. The President Pro Tempore of the Senate shall designate
13 one Senator as cochairman and the Speaker of the House of Representatives
14 shall designate one Representative as cochairman.

15 Sec. 3. The Commission shall:

- 16 (1) Review current laws regulating land use in the mountain area
17 to determine whether local governments need additional
18 authority regarding land use management and local planning;
19 (2) Evaluate planning models and programs in other states that
20 are designed to coordinate provision of infrastructure,
21 protection of the environment and natural resources, and
22 efforts to accommodate growth;
23

- 1 (3) Develop voluntary planning guidelines and models that are
2 geared to the special needs of the mountain area and that
3 pertain to mountain protection, land use management, farm
4 preservation, infrastructure, economic development, growth
5 strategies, and any other relevant subject matter appropriate
6 for local or regional planning to improve the quality of life of
7 citizens in the mountain area;
- 8 (4) Develop voluntary planning guidelines and models that
9 include options for local governments to accept, modify, or
10 reject the models developed;
- 11 (5) Review the procedures that should be followed by local
12 governments in adopting local land use and planning models;
- 13 (6) Review the kinds of technical assistance needed by
14 communities to implement local planning models, including
15 but not limited to the use of geographical information
16 systems;
- 17 (7) Develop special incentives for individuals and local
18 governments to promote mountain protection and local
19 planning, and to encourage the management of land resources
20 in the mountain area; and
- 21 (8) Establish a process of citizen participation and education on
22 planning issues that assures mountain area citizens of the
23 opportunity to be informed of and contribute to the work of
24 the Commission.

25 Sec. 4. The Commission shall report its findings and
26 recommendations to the 1994 Regular Session of the 1993 General Assembly
27 or the 1995 General Assembly, or both, by filing the report with the President
28 Pro Tempore of the Senate and the Speaker of the House of Representatives on
29 or before the first day of the session. Upon filing its final report, the
30 Commission shall terminate.

31 Sec. 5. The Commission, while in the discharge of official duties,
32 may exercise all the powers provided for under the provisions of G.S. 120-19,
33 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any
34 time upon the joint call of the cochairmen. The Commission may meet in the
35 Legislative Building or the Legislative Office Building.

36 Sec. 6. Members of the Commission shall receive subsistence and
37 travel expenses at the rates set forth in G.S. 120-3.1.

38 Sec. 7. The Commission may contract for professional, clerical, or
39 consultant services as provided by G.S. 120-32.02. The Legislative Services
40 Commission, through the Legislative Administrative Officer, shall assign
41 professional staff to assist in the work of the Commission. The House of
42 Representatives' and the Senate's Supervisors of Clerks shall assign clerical
43 staff to the Commission, upon the direction of the Legislative Services

1 Commission. The expenses relating to clerical employees shall be borne by
2 the Commission.

3 Sec. 8. When a vacancy occurs in the membership of the
4 Commission the vacancy shall be filled by the same appointing officer who, or
5 entity which, made the initial appointment.

6 Sec. 9. All State departments and agencies and local governments
7 and their subdivisions shall furnish the Commission and its staff with any
8 information in their possession or available to them.

9 Sec. 10. This act is effective upon ratification.



**MOUNTAIN AREA STUDY COMMITTEE
MEMBERSHIP
1993-1994**

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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LEGISLATIVE PROPOSAL #1
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Mtn. Area Management Act.

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Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PRESERVE THE SCENIC BEAUTY AND CULTURAL HERITAGE OF THE
3 NORTH CAROLINA MOUNTAINS THROUGH INCENTIVE-BASED COUNTY
4 PLANNING AND LAND USE MANAGEMENT AND TO APPROPRIATE FUNDS TO
5 THE DEPARTMENT OF COMMERCE FOR FUNDING INCENTIVES TO MOUNTAIN
6 AREA COUNTIES THAT ADOPT PLANS AND ORDINANCES BASED ON THE
7 STATE MODEL LAND USE GUIDANCE SYSTEM.
8 The General Assembly of North Carolina enacts:
9 Whereas, the General Assembly wishes to encourage a
10 management plan that will focus on the mountain region; and
11 Whereas, it is critical to establish the planning
12 process as voluntary and provide local governmental units with
13 the option for participation; and
14 Whereas, the Mountain Area Management Act of 1995 will
15 incorporate within the planning process financial incentives for
16 participation, including cash grants and defined levels of
17 technical assistance from state agencies and include additional
18 incentives for weighted advantages for grants and loans for
19 planning participants meeting established criteria; and
20 Whereas, it is necessary to encourage infrastructure
21 planning through capital improvement budgeting as a prerequisite
22 for grants and loans for facilities; and

1 Whereas, it is advisable to create implementation
2 components of these plans which may be phased in over a period of
3 time; and

4 Whereas, there is a need to establish minimum levels of
5 plan adoption and implementation as a requisite for
6 participation; and

7 Whereas, it is in the best interest of the mountain
8 region to develop plans on the basis of uniform standards for
9 design, information and implementation and to create plans at the
10 local level in conformance with established guidelines and direct
11 public involvement; and

12 Whereas, the Mountain Area Management Act of 1995 will
13 establish plan guidelines that incorporate the promotion of
14 economic development, protection of the environment, and resource
15 conservation; Now, therefore,

16 The General Assembly of North Carolina enacts:

17 Section 1. This act shall be known as the Mountain Area
18 Management Act of 1995.

19 Sec. 2. (a) The "mountain area" of North Carolina as
20 used herein includes all of the counties of this State having at
21 any place therein a natural elevation of at least 3000 feet above
22 sea level.

23 (b) On or before July 1, 1996, all Boards of County
24 Commissioners for counties lying within the mountain area of
25 North Carolina, as herein defined, shall determine whether to
26 develop a Comprehensive Land Use Plan and to prepare a Land Use
27 Management Ordinance to implement such plan, as authorized by
28 North Carolina General Statutes, Chapter 153A, Article 18, Part
29 3, and be based upon the Burke County, North Carolina,
30 Comprehensive Land Use Plan of 1991 and the Burke County, North
31 Carolina, Land Use Management Ordinance of 1992, as amended
32 through December 16, 1994, and as the State Land Use Guidance
33 System Model, or to update and conform any such existing Plan and
34 Ordinance, for the areas within such county lying outside the
35 corporate limits of cities and towns lying within such county
36 and, upon development of such plan Plan and Ordinance, shall
37 adopt or reject such Plan and Ordinance on or before July 1,
38 1997.

39 (c) If such Board of County Commissioners decides to develop
40 such Plan and to prepare such Ordinance, or to update and conform
41 an existing Plan and Ordinance, the sum of \$50,000 shall be
42 allocated to such county by the Department of Commerce from funds
43 herein appropriated to that Department to fund such planning and
44 preparation.

1 (d) If such Board of County Commissioners decides to adopt
2 such Plan and Ordinance, the sum of \$50,000 shall be allocated to
3 such county by the Department of Commerce from funds herein
4 appropriated to that department to fund such program.

5 (e) If such Board of County Commissioners decides not to
6 prepare such Plan and Ordinance or not to adopt such Plan and
7 Ordinance, or not to update and conform an existing Plan and
8 Ordinance, such county shall receive only ten percent (10%) of
9 federal and state funds otherwise available for funding
10 infrastructure, water and sewer construction and repair, economic
11 development and community development.

12 (f) Any adopted Plan and Ordinance shall include specifically
13 the vested rights provisions of the Model Ordinance to implement
14 the provisions of G.S. 153A-344.1, the Judicial Determination
15 provision set out in said Model Ordinance and the Public
16 Hearings, Compatibility Assessments and Appeal procedures set out
17 in such Model Ordinance.

18 (g) The funds appropriated to the Department of Commerce by
19 this Act are to be allocated by that Department to those counties
20 preparing Plans and Ordinances and adopting Plans and Ordinances,
21 or updating and conforming Plans and Ordinances, consistent with
22 this Act, for funding such planning, preparation and for
23 implementing such Plans and Ordinances.

24 Sec. 3. There is appropriated from the General Fund to
25 the Department of Commerce for the 1995-96 fiscal year the sum of
26 \$1.1 million for a program to fund grant incentives to mountain
27 counties which adopt comprehensive county plans and land use
28 management ordinances in compliance with the State Land Use
29 Guidance System model developed by the Department of Commerce.

30 Sec. 4. Chapter 113A of the General Statutes is amended
31 by adding a new article to read:

32 "ARTICLE 16.

33 Mountain Area Management"

34 "§ 113A-228. Purpose of article.

35 The purpose of this Article is to promote quality development,
36 scenic preservation and cultural heritage in the Mountain Area by
37 facilitating the development of county comprehensive land use
38 plans and the implementation of county land use management
39 ordinances.

40 "§ 113A-229. Role of the Department of Commerce.

41 The Department of Commerce shall cooperate in developing for
42 use by the mountain counties a model land use management
43 ordinance and a model for developing a comprehensive land use
44 plan for those mountain counties which choose, by vote of the

1 county commissioners, to participate in the mountain area
2 management program.

3 "§ 113-330. Features of the land use management ordinance;
4 guidelines.

5 (a) The models for mountain area land use management
6 ordinances and adoption of comprehensive land use plans shall
7 include, but are not limited, to the features set forth in this
8 section.

9 (b) Mountain county comprehensive planning shall be divided
10 into five major stages:

11 (1) Clarification of community goals and objectives;

12 (2) Research;

13 (3) Plan formulation;

14 (4) Plan implementation; and

15 (5) Review and revision.

16 (c) A compatibility meeting shall be held on each development
17 request. The hearing shall be held for the purpose of reaching a
18 compromise on any controversial issues. All adjacent property
19 owners within 1500 feet of the proposed project site shall
20 receive written notice of the meeting and they shall have the
21 right to ask questions of the developer at the hearing. The
22 purpose of any inquiry by the county planning staff and the
23 public shall be to ensure that the project is compatible with the
24 county plan and will not have a negative impact on the
25 surrounding area. Any consensus reached shall be binding on the
26 developer. If no consensus is reached, then the project shall
27 have a nonconsensus status. Any developer adversely affected by
28 the outcome of the hearing shall have developers rights as set
29 forth in G.S. 113A-331.

30 "§ 113-331. Hearing process requirements.

31 (a) When an application for a change in land use is submitted
32 to the planning staff, the staff shall classify the proposed
33 development as one of four uses:

34 (1) PROHIBITED - Hazardous or nuclear waste disposal or
35 storage; non-county established landfills;
36 development that would destroy historic sites and;
37 flashing signs.

38 (2) EXEMPT - Agriculture, bonafide farms; yard sales;
39 produce stands; most signs; and home occupations.

40 (3) USES-BY-RIGHT - Single Family residential and
41 expansion of existing uses not to exceed 50% of the
42 current use.

43 (4) ALLOWABLE/PERMITTED - Any use not considered
44 prohibited, exempt, or use-by-right.

1 (b) If the proposed development is determined to be an
2 allowable use, it shall be reviewed first by the county planning
3 staff to determine if the proposed use meets the goals and
4 objectives of the Burke County Comprehensive Plan. The following
5 eleven criteria are used to access the merits of each proposal:

- 6 (1) Percent of surrounding area developed;
- 7 (2) Similarity of development in the area;
- 8 (3) Proximity to designated growth areas;
- 9 (4) Impact on public school system;
- 10 (5) Road characteristics affecting the site;
- 11 (6) Air quality impact;
- 12 (7) Distance from historic sites;
- 13 (8) Type of water system;
- 14 (9) Type of sewage system;
- 15 (10) Distance to a fire station; and
- 16 (11) Distance to rescue squad or ambulance base.

17 (c) The purpose of the Compatibility Meeting is to gain
18 citizen input into land use decisions. These meetings shall be
19 held by the Planning Staff to provide a forum whereby neighboring
20 property owners and the developer may sit down and discuss the
21 merits of a proposal. The basic premise of the land use
22 management ordinance is to make the proposal compatible with
23 surrounding existing uses, not to find ways to deny a project.

24 At the Compatibility Meeting, the developer shall describe the
25 proposed project. Property owners are permitted to ask questions
26 on the following topics to ensure that the project will not have
27 a negative impact on the surrounding area:

- 28 (1) Increased vehicle traffic and parking;
- 29 (2) Increased pedestrian traffic;
- 30 (3) Unsightly views from nearby properties;
- 31 (4) Noise;
- 32 (5) Lighting glare on neighboring properties;
- 33 (6) Storm water runoff or flooding;
- 34 (7) Odors;
- 35 (8) Air or water pollution;
- 36 (9) Loss of privacy for neighboring properties;
- 37 (10) Effect on character of the area;
- 38 (11) Increased need for government services;
- 39 (12) Increased need for utilities; and
- 40 (13) Compatibility with County Comprehensive Plan.

41 The goal of this meeting is to reach a compromise or consensus
42 on these issues. In cases where a consensus cannot be reached, a
43 second opportunity to reach an agreement is provided in the
44 public hearing.

1 (d) The Board of Commissioners, the Board Adjustment, or both,
2 shall hold a Public Hearing. The recommendations of the Planning
3 Board shall be presented at this time. Property owners within
4 1,500 feet of the proposed development shall be mailed notices of
5 the hearing. Along with newspaper advertisements, a sign shall
6 be posted on the property informing the public of the hearing.

7 The results of the Growth Guidance Assessment and the
8 Compatibility Meeting shall be reviewed for information.
9 Comments shall be received from the public concerning only the
10 issues identified in the Compatibility Meeting. The Board of
11 Commissioners or the Board of Adjustment shall either deny or
12 approve the proposal, placing reasonable and appropriate
13 conditions on the development that would make the proposal more
14 compatible to surrounding land uses.

15 If the project is approved, the developer shall be issued a
16 compliance permit and may proceed with construction plans. If
17 denied, it shall usually mean that a development of that type at
18 the specific location does not conform to the goals of the
19 Comprehensive Plan and the Land Use Management Ordinance. As
20 characteristics and amenities of an area change, future
21 development on the site remains possible through a new
22 application."

23 Sec. 5. Section 3 of this act becomes effective July 1,
24 1995, and the remainder of this act is effective upon
25 ratification.

LEGISLATIVE PROPOSAL #1

Section-by-Section Analysis

Section 1 of Legislative Proposal #1 states that the act shall be known as the "Mountain Area Management Act of 1995."

Section 2 begins by providing that the "mountain area" of the State includes all of the counties having at any place therein a natural elevation of at least 3000 feet above sea level. Section 2 goes on to create a voluntary, incentive-based program for county planning in the mountain area. Specifically, it provides that, by July 1, 1996, all boards of commissioners of the mountain area counties shall determine whether to develop (for the areas within the county lying outside municipal limits) a comprehensive land use plan and to prepare a land use management ordinance to implement such plan, based upon the described State Land Use Guidance System Model, or to update and conform any existing plan and ordinance, and upon development of such plan and ordinance, shall adopt or reject such plan and ordinance on or before July 1, 1997. Counties that adopt or conform such plans and ordinances would be awarded grant funds in the amount of \$50,000 through a program to be administered by the Department of Commerce. Counties that decide not to prepare such plans and ordinances, or that decide not to update existing plans and ordinances, would receive only ten percent (10%) of federal and State funds otherwise available for funding infrastructure, water and sewer construction and repair, economic development, and community development.

Section 3 would appropriate to the Department of Commerce the sum of \$1.1 million for the 1995-96 fiscal year to fund the monetary incentives for mountain area planning.

Section 4 amends Chapter 113A to create a new article entitled "Mountain Area Management." The new article describes the role of the Department of Commerce in cooperating with mountain area counties that choose to participate in the voluntary, incentive-based planning program. The new article also sets forth the main features of the State model and hearing process requirements.

Section 5 makes the act effective upon ratification, except that the appropriation contained in the act is effective July 1, 1995.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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LEGISLATIVE PROPOSAL #2
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Mtn. Area Watershed Exemption.

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT CERTAIN NORTH CAROLINA MOUNTAIN COUNTIES WHICH
3 IMPLEMENT THE STATE MODEL COUNTY PLANNING AND LAND USE
4 MANAGEMENT ORDINANCE FROM STATE WATER SUPPLY WATERSHED LAWS AND
5 REGULATIONS.
6 The General Assembly of North Carolina enacts:
7 Section 1. Any Board of County Commissioners of a
8 county having at any place therein a natural elevation of at
9 least 3000 feet above sea level shall have the option of
10 replacing entirely the provisions of the water supply Watershed
11 Protection Act, S.L. 1989, C. 426, and all amendments thereto,
12 with provisions within their adopted County and Ordinance, as
13 applied to that county, pursuant to this Act and consistent with
14 the State Land Use Guidance System Model, so long as such Plan
15 and Ordinance considers and addresses the unique features of the
16 mountain area, including elevation, slope, location of springs,
17 streams, waterfalls, flood plains, wetlands, temperature,
18 rainfall, plant and animal species indigenous to the mountain
19 area and other natural elements that may affect the mountain area
20 in a manner or to an extent different from or greater than such
21 elements would have on other areas of the State.

1 Sec. 2. The Secretary of the Department of Environment,
2 Health, and Natural Resources shall certify which counties are in
3 compliance with the watershed protection exemption requirements
4 set forth in Section 1 of this act.

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

LEGISLATIVE PROPOSAL #2
Section-by-Section Analysis

Section 1 of Legislative Proposal #2 provides that any mountain area county that participates in the State's voluntary, incentive-based mountain area planning program and adopts a plan and ordinance that addresses the unique features of the mountain area (including elevation, slope, location of springs, streams, waterfalls, flood plains, wetlands, temperature, rainfall, plant and animal species indigenous to the mountain area, and other natural elements particular to the mountain area) may replace the State's water supply watershed laws and regulations with the provisions its ordinance.

Section 2 provides that the Secretary of the Department of Environment, Health and Natural Resources is to certify compliance for the exemption.

Section 3 makes the act effective upon ratification.