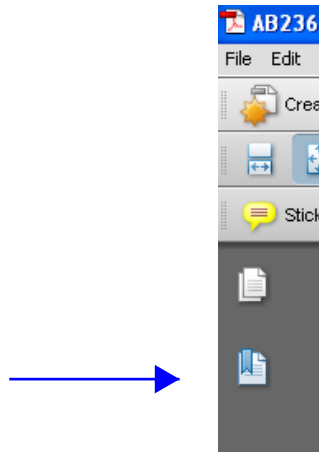


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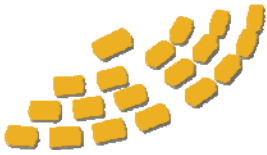
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LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **North Carolina House Bill 53xx (Holmes – 1996)**
Chapter 18-es2, Statutes of 1996

The legislative history of the above-referenced bill is documented by materials[♦] itemized in one declaration. We discuss **North Carolina General Statutes section 108A-57** below.

NORTH CAROLINA HOUSE BILL 53XX (HOLMES – 1996) **CHAPTER 18-es2, STATUTES OF 1996**

North Carolina General Statutes section 108A-57 was amended in 1996 following legislative approval of House Bill 53 of the second extraordinary session. (See [Exhibit #1d](#)) Representative George Minton Holmes, co-chair of the House Appropriations Committee, introduced the bill on July 10, 1996. (See [Exhibit #1a](#)) This act was entitled: “the Current Operations and Appropriations Act of 1996.” (Id.)

House Bill 53xx was assigned to the House Rules, Calendar and Operations of the House. (See [Exhibit #2](#)) House Bill 53xx was referred to the House Committee on Appropriations and the Senate Committee on Pensions & Retirement and Insurance, as well as the Senate Appropriations Subcommittee on Human Resources where policy issues raised by the bill were considered. (See [Exhibits #4 through #7](#)) The fiscal ramifications of the bill were considered by the Senate Finance Committee. (See [Exhibit #2](#)) House Bill 53xx was amended by the Senate Appropriations Committee “substitute.” (See [Exhibits #1b and #2](#))

The House failed to concur with the Senate amendments and a Conference Committee was appointed. The purpose of a Conference Committee is to bring together members from each House, in an attempt to reach a compromise on a bill’s language which is acceptable to both the House and the Senate. The Conference Report was adopted by both Houses. (See [Exhibit #2](#)) [We were not able to obtain

[♦] For information on document numbers, research policies, request for judicial notice and more, please visit www.legintent.com and click on “**Research Aids and Policies**” and “**Points and Authorities**” at the bottom of the web page.

this report from North Carolina.] House Bill 53xx was ratified on August 8, 1996 and recorded as Session Law 1996, Chapter 18es-2. ([See Exhibit #1d](#))

As introduced on July 10, 1996, House Bill 53xx was entitled:

AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE
FUNDS FOR PUBLIC EDUCATION AND FOR
SALARY INCREASES FOR TEACHERS AND STATE
EMPLOYEES.

([See Exhibit #1a](#))

At the time of the adoption of the Senate Committee on Appropriations substitute, the bill was amended to be entitled:

AN ACT TO MODIFY THE CONTINUATION BUDGET
OPERATIONS APPROPRIATIONS ACT OF 1995, AND
THE EXPANSION AND CAPITAL IMPROVEMENTS
APPROPRIATIONS ACT OF 1995, AND TO MAKE
OTHER CHANGES IN THE BUDGET OPERATIONS
OF THE STATE.

([See Exhibit #1b](#))

We were able to obtain the Senate Committee on Pensions and Retirement/ Insurance/State Personnel file relating to House Bill 53xx. ([See Exhibit #4](#)) This material did not offer specific information on your particular area of focus. (Id.) It did provide some insight as to the amendment process, or lack thereof, for House Bill 53xx during the course of the extraordinary session:

The Senate Committee on Pensions & Retirement/Insurance/State Personnel met at 11:00 a.m. on Tuesday, July 16, 1996, at Senator Soles' desk in the Senate Chamber during a recess of the session. Fourteen members of the Committee were present.

([See Exhibit #4](#))

According to our research, North Carolina does not provide minutes for its Conference Committees. Although House Bill 53xx recommended a "LRC study" as a part of the bill, we could not locate this study. ([See Exhibit # 10](#))

After its introduction, House Bill 53xx was amended two times before it was enacted into law. ([See Exhibit #1b through #1d](#)) A full understanding of legislative intent may be dependent upon knowing about the various proposals as introduced into the bill and then as amended throughout the bill's consideration by the Assembly and the Senate Committees reviewing this measure. (Id.) This can be particularly helpful where your focus is on specific language; by contrasting that enacted with the prior proposals in the bill one can gain insight as to the intended meaning or the apparent controversy generated by the language of interest. (Id.)

North Carolina General Statutes section 108A-57:

The proposal to amend North Carolina General Statutes section 108A-57 first appeared in House Bill 53xx in the Senate Appropriations Committee substitute for the bill, adopted July 16, 1996. (See [Exhibit #1b, page 129](#)) At this time, the Senate proposed to make both grammatical and substantive changes to the language of section 108A-57, under the heading of “Medicaid Subrogation Change.” (Id.) These changes were located in “Section 24.1A (a)” of the Act and were “requested by Senator Martin of Guilford.”(Id.)

You will note that this language was not evident in the next version of the bill, although it was engrossed on the same July 16, 1996 date. (See [Exhibit #1c](#)) It is our understanding that North Carolina engrosses its bills prior to re-referral of the bill to another committee; when requested by the presiding officer; when requested by a standing committee; and after final passage by a chamber, before its transmittal to the other chamber. It is possible that the language did not appear in the engrossed version of House Bill 53xx as the result of the hurried nature of the extraordinary session.

Although North Carolina does not maintain minutes from its Conference Committees, and no printed version of the bill exists directly showing the Conference Committee’s proposed amendments; a close examination of the chaptered version of House Bill 53xx as compared to the July 16, 1996 version, provides one with that information. (See [Exhibit #1b, page 129](#) and [Exhibit #1d, pages 147 through 149](#))

Careful review of the documents enclosed may help you locate discussion related to the issue before you on section 108A-57. If you are unable to find specific discussion regarding your research question, the materials enclosed herewith may provide you with an arguable assessment of the goals and purpose that could be applicable to your particular situation. This would permit you to draw some conclusions based upon the assumption that the language of interest to you was intended to be consistent with the overall goal of the legislation.

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.



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DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of North Carolina House Bill 53xx of 1996. House Bill 53xx was approved by the Legislature and was enacted as Session Law 18es-2 of the Statutes of 1996.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on North Carolina House Bill 53xx of 1996. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

NORTH CAROLINA HOUSE BILL 53XX OF 1996:

1. All versions of House Bill 53xx (Holmes-1996);
2. History of House Bill 53xx from the 1996 2nd Special Session;
3. Excerpt regarding House Bill 53xx from the *Journal of the House of Representatives*, 1996;
4. Minutes regarding House Bill 53xx prepared by the Senate Committee on Pensions and Retirement/Insurance/State Personnel;
5. Excerpt regarding General Statutes Section 108A-57 from the legislative bill file of the Senate Committee on Pensions and Retirement/Insurance/State Personnel on House Bill 53xx;

6. Committee Report of House Bill 53xx prepared by the Senate Committee on Pensions and Retirement/Insurance/State Personnel, dated July 16, 1996;
7. Minutes regarding House Bill 53xx prepared by the Senate Committee on Appropriations Subcommittee on Human Resources;
8. Excerpt regarding House Bill 53xx from the *Journal of the Senate*, 1996;
9. *Campbell Law Review* article, entitled, "Orders from on High..." prepared by Allan N. Trask, III, Volume 30:471, dated July 7, 2008;
10. Excerpts regarding House Bill 53xx from the *Legislative Research Commission* publications, as follows:
 - a. "Non-Standing Committees Interim Studies," prepared by the Research Division of the Legislative Services Office, dated February, 1997,
 - b. "Commission Activities 1995-96 Biennium Summaries," 1997 Session;
11. Excerpt regarding House Bill 53xx from the *Summaries of Substantive Ratified Legislation*, prepared by the Research Division of the North Carolina General Assembly, November 1996;
12. Excerpt regarding House Bill 53xx from the *North Carolina Legislation 1996*, prepared by the Institute of Government at the University of North Carolina at Chapel Hill, 1996.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of October, 2012 at Woodland, California.

JENNY S. LILLGE

GENERAL ASSEMBLY OF NORTH CAROLINA

SECOND EXTRA SESSION 1996

H

1

HOUSE BILL 53

Short Title: Budget/Salary and Education Funds.

(Public)

Sponsors: Representatives Holmes, Creech, Esposito; Allred, Justus, Morgan, Rayfield, Sharpe, and Watson.

Referred to: Rules.

July 10, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR
3 PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND
4 STATE EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6
7 **PART 1. INTRODUCTION AND TITLE OF ACT**

8
9 **INTRODUCTION**

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

16
17 **TITLE OF ACT**

18 Sec. 1.1. This act shall be known as the Current Operations Appropriations
19 Act of 1996.



PART 2. GENERAL FUND APPROPRIATIONS**CURRENT OPERATIONS/GENERAL FUND**

Sec. 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1996-97 fiscal year.

<u>Current Operations - General Fund</u>				<u>1996-97</u>
Department of Public Education				
01.	Additional Funds for Average Daily Membership	\$54,051,018		
02.	Adjust Average Salary for Certified Personnel (21,312,465)			
03.	Reduce Class size in Grade 2	18,442,095		
	Funds to reduce class size in grade 2 from the current allocation ratio of 1:26 to 1:23.			
04.	School Technology Funds			
	Additional funds for school technology to be distributed on average daily membership of school districts.			
	Recurring	10,000,000		
	Nonrecurring	10,000,000		
TOTAL	Department of Public Education			
		\$71,180,648		
Reserve for Compensation Increase				
	Recurring	\$238,000,000		
	Nonrecurring	3,000,000		
GRAND TOTAL	CURRENT OPERATIONS-GENERAL		FUND	
				\$31
		2,180,648		

PART 3. HIGHWAY FUND APPROPRIATIONS

Sec. 3.1. Appropriations from the Highway Fund of the State for the purposes enumerated, are made for the biennium ending June 30, 1997, according to the following schedule.



1	<u>Current Operations/Highway Fund</u>		
2	Reserve	for	Salary
3			Increase
4	,800,000		\$14

5

6 GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUND \$14,800,000

7

8 **PART 4. SALARY INCREASES**

9

10 Requested by: Representatives Holmes, Creech, Esposito

11 **JUDICIAL BRANCH OFFICIALS**

12 Sec. 4.1. Section 7.4 of Chapter 507 of the 1995 Session Laws reads as

13 rewritten:

14 "Sec. 7.4. (a) The annual salaries, payable monthly, for specified judicial branch

15 officials for the 1995-96 and 1996-97 fiscal years-year are:

16	<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
17		
18		
19	Chief Justice, Supreme Court	\$98,576
20	Associate Justice, Supreme Court	96,000
21	Chief Judge, Court of Appeals	93,600
22	Judge, Court of Appeals	92,000
23	Judge, Senior Regular Resident Superior Court	89,500
24	Judge, Superior Court	87,000
25	Chief Judge, District Court	79,000
26	Judge, District Court	76,500
27	District Attorney	80,600
28	Administrative Officer of the Courts	89,500
29	Assistant Administrative Officer of the Courts	75,160
30	Public Defender	80,600

31

32 (b) The district attorney or public defender of a judicial district, with the approval

33 of the Administrative Officer of the Courts, shall set the salaries of assistant district

34 attorneys or assistant public defenders, respectively, in that district such that the average

35 salaries of assistant district attorneys or assistant public defenders in that district do not

36 exceed ~~forty-nine thousand five hundred eighty dollars (\$49,580), fifty-one thousand five~~

37 hundred sixty-three dollars (\$51,563), and the minimum salary of any assistant district

38 attorney or assistant public defender is at least ~~twenty-five thousand three hundred twelve~~

39 dollars (\$25,312) effective July 1, 1995. twenty-six thousand three hundred twenty-four

40 dollars (\$26,324) effective July 1, 1996.

41 (c) The salaries in effect for the ~~1994-95-1995-96~~ fiscal year for permanent, full-

42 time employees of the Judicial Department, except for those whose salaries are itemized



in this Part, shall be increased by ~~two percent (2%), commencing July 1, 1995.~~ four percent (4%), commencing July 1, 1996.

(d) The salaries in effect for the ~~1994-95-1995-96~~ fiscal year for all permanent, part-time employees of the Judicial Department shall be increased on and after ~~July 1, 1995,~~ July 1, 1996, by pro rata amounts of the ~~two percent (2%).~~ four percent (4%)."

Requested by: Representatives Holmes, Creech, Esposito

ASSISTANT AND DEPUTY CLERKS OF SUPERIOR COURT

Sec. 4.2. G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
--------------------------------------	---------------

Minimum	\$21,549	<u>\$22,411</u>
Maximum	38,154	<u>39,680</u>

Deputy Clerks	Annual Salary
---------------	---------------

Minimum	\$17,229	<u>\$17,918</u>
Maximum	29,389.	<u>30,565.</u>

Requested by: Representatives Holmes, Creech, Esposito

MAGISTRATES' PAY PLAN

Sec. 4.3. (a) G.S. 7A-171.1(a)(1) reads as rewritten:

"(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

TABLE OF SALARIES OF FULL-TIME MAGISTRATES

<u>Step Level</u>	Annual Salary
Entry Rate	<u>\$23,417</u>
<u>\$24,354</u>	
Step 1	<u>25,767</u>
<u>26,798</u>	



1	Step 2	28,325
2	<u>29,458</u>	
3	Step 3	31,116
4	<u>32,361</u>	
5	Step 4	34,173
6	<u>35,540</u>	
7	Step 5	37,533
8	<u>39,034</u>	
9	Step 6	41,228.
10	<u>42,877."</u>	

(b) G.S. 7A-171.1(a1)(1) reads as rewritten:

"(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	\$18,457
1 or more but less than 3 years of service	19,406 <u>20,182</u>
3 or more but less than 5 years of service	21,314 <u>\$22,167."</u>

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

Requested by: Representatives Holmes, Creech, Esposito

GENERAL ASSEMBLY PRINCIPAL CLERKS

Sec. 4.4. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~fifty-five thousand eighty dollars (\$55,080)~~ fifty-seven thousand two hundred eighty-three dollars (\$57,283) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Representatives Holmes, Creech, Esposito

SERGEANT-AT-ARMS AND READING CLERKS

Sec. 4.5. G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~two hundred thirty-seven dollars (\$237.00) per week~~ two hundred forty-six dollars (\$246.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized



1 by the Legislative Services Commission. The reading clerks shall serve during sessions
2 only."

3
4 Requested by: Representatives Holmes, Creech, Esposito

5 **LEGISLATIVE EMPLOYEES**

6 Sec. 4.6. Section 7.11 of Chapter 507 of the 1995 Session Laws reads as
7 rewritten:

8 "Sec. 7.11. The Legislative Administrative Officer shall increase the salaries of
9 nonelected employees of the General Assembly in effect for fiscal year ~~1994-95 by two~~
10 ~~percent (2%).~~ 1995-96 by four percent (4%). Nothing in this act limits any of the
11 provisions of G.S. 120-32."

12
13 Requested by: Representatives Holmes, Creech, Esposito

14 **COMMUNITY COLLEGES PERSONNEL**

15 Sec. 4.7. Section 7.12 of Chapter 507 of the 1995 Session Laws reads as
16 rewritten:

17 "Sec. 7.12. The Director of the Budget shall transfer from the Reserve for Salary
18 Increases created in this act for fiscal year 1995-96 funds to the Department of
19 Community Colleges necessary to provide an average annual salary increase of ~~two~~
20 ~~percent (2%).~~ four percent (4%). including funds for the employer's retirement and social
21 security contributions, commencing ~~July 1, 1995,~~ July 1, 1996, for all permanent full-
22 time community college institutional personnel supported by State funds. The State
23 Board of Community Colleges shall establish guidelines for providing their salary
24 increases to community college institutional ~~personnel.~~ personnel to include
25 consideration of increases based on performance. Salary funds shall be used to provide an
26 average annual salary increase of ~~two percent (2%).~~ four percent (4%) to all full-time
27 employees and part-time employees on a pro rata basis."

28
29 Requested by: Representatives Holmes, Creech, Esposito

30 **UNIVERSITY OF NORTH CAROLINA SYSTEM – EPA SALARY INCREASES**

31 Sec. 4.8. Section 7.13 of Chapter 507 of the 1995 Session Laws reads as
32 rewritten:

33 "Sec. 7.13. The Director of the Budget shall transfer to the Board of Governors of
34 The University of North Carolina sufficient funds from the Reserve for Salary Increases
35 created in this act for fiscal year ~~1995-96-1996-97~~ to provide an annual average salary
36 increase of ~~two percent (2%).~~ four percent (4%). including funds for the employer's
37 retirement and social security contributions, commencing ~~July 1, 1995,~~ July 1, 1996, for
38 all employees of The University of North Carolina, as well as employees other than
39 teachers of the North Carolina School of Science and Mathematics, supported by State
40 funds and whose salaries are exempt from the State Personnel Act (EPA). These funds
41 shall be allocated to individuals according to the rules adopted by the Board of
42 Governors, or the Board of Trustees of the North Carolina School of Science and
43 Mathematics, as appropriate, and may not be used for any purpose other than for salary



1 increases and necessary employer contributions provided by this section. The Board of
2 Governors shall include consideration of increases based on performance in its adoption
3 of rules for the allocation of funds for salary increases."
4

5 Requested by: Representatives Holmes, Creech, Esposito

6 **MOST STATE EMPLOYEES**

7 Sec. 4.9. Section 7.14 of Chapter 507 of the 1995 Session Laws reads as
8 rewritten:

9 "Sec. 7.14. (a) The salaries in effect ~~June 30, 1995, June 30, 1996,~~ of all permanent
10 full-time State employees whose salaries are set in accordance with the State Personnel
11 Act, and who are paid from the General Fund or the Highway Fund shall be increased, on
12 or after ~~July 1, 1995, July 1, 1996,~~ unless otherwise provided by this act, ~~by two percent~~
13 ~~(2%) pursuant to the Comprehensive Compensation System set forth in G.S. 126-7, as~~
14 ~~follows:~~

15 (1) Career growth recognition awards in the amount of two percent (2%);
16 and

17 (2) A cost-of-living adjustment in the amount of two percent (2%).

18 (b) Except as otherwise provided in this act, salaries in effect ~~June 30, 1995, June~~
19 ~~30, 1996,~~ for permanent full-time State officials and persons in exempt positions that are
20 recommended by the Governor or the Governor and the Advisory Budget Commission
21 and set by the General Assembly shall be increased by ~~two percent (2%), commencing~~
22 ~~July 1, 1995, four percent (4%), commencing July 1, 1996.~~

23 (c) The salaries in effect ~~June 30, 1995, June 30, 1996,~~ for all permanent part-time
24 State employees shall be increased on and after ~~July 1, 1995, July 1, 1996,~~ by pro rata
25 amounts of the salary increases provided for permanent full-time employees covered
26 under subsection (a) of this section.

27 (d) The Director of the Budget may allocate out of special operating funds or from
28 other sources of the employing agency, except tax revenues, sufficient funds to allow a
29 salary increase on and after ~~July 1, 1995, July 1, 1996,~~ in accordance with subsections
30 (a), (b), or (c) of this section, including funds for the employer's retirement and social
31 security contributions, of the permanent full-time and part-time employees of the agency.

32 (e) Within regular Executive Budget Act procedures as limited by this act, all
33 State agencies and departments may increase on an equitable basis the rate of pay of
34 temporary and permanent hourly State employees, subject to availability of funds in the
35 particular agency or department, by pro rata amounts salary increase provided for
36 permanent full-time employees covered by the provisions of subsection (a) of this
37 section, commencing ~~July 1, 1995, July 1, 1996.~~

38 (f) Except as provided by subsection (a) of this section, no ~~No~~ person may receive
39 a salary increase under G.S. 126-7 during the ~~1995-96-1996-97~~ fiscal year, and no State
40 employee or officer shall receive a merit increment during the ~~1995-96 and 1996-97~~
41 ~~fiscal years-year~~ except as otherwise provided by this act."
42

43 Requested by: Representatives Holmes, Creech, Esposito



ALL STATE-SUPPORTED PERSONNEL

Sec. 4.10. (a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

(c) The salary increases provided in this Part are to be effective July 1, 1996, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1996, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.

Payroll checks issued to employees after July 1, 1996, which represent payment of services provided prior to July 1, 1996, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d) The Director of the Budget shall transfer from the Reserve for Salary Increases in this act for fiscal year 1996-97 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

Requested by: Representatives Holmes, Creech, Esposito

TEACHER SALARY SCHEDULES

Sec. 4.11. (a) The Director of the Budget may transfer from the Reserve for Salary Increases for the 1996-97 fiscal year funds necessary to implement the teacher salary schedule set out in subsection (b) of this section, including funds for the employer's retirement and social security contributions and funds for annual longevity payments at one percent (1%) of base salary for 10 to 14 years of State service, one and one-half percent (1.5%) of base salary for 15 to 19 years of State service, two percent (2%) of base salary for 20 to 24 years of State service, and two and one-half percent (2.5%) of base salary for 25 or more years of State service, commencing July 1, 1996, for all teachers whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction. The longevity payment shall be paid in a lump sum once a year.

(b)(1) Beginning July 1, 1996, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "A" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.



	<u>Years of Experience</u>	<u>1996-97 Salary</u>
1	00	\$2,103
2	01	2,145
3	02	2,187
4	03	2,274
5	04	2,320
6	05	2,367
7	06	2,415
8	07	2,463
9	08	2,512
10	09	2,562
11	10	2,613
12	11	2,665
13	12	2,718
14	13	2,772
15	14	2,827
16	15	2,883
17	16	2,940
18	17	2,999
19	18	3,059
20	19	3,121
21	20	3,183
22	21	3,247
23	22	3,312
24	23	3,378
25	24	3,446
26	25	3,515
27	26	3,585
28	27	3,657
29	28	3,730
30	29	3,805
31	30+	3,805

- (2) Beginning July 1, 1996, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "G"teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

	<u>Years of Experience</u>	<u>1996-97 Salary</u>
34	00	\$2,234
35	01	2,279
36	02	2,324
37	03	2,417



1	04	2,466
2	05	2,515
3	06	2,565
4	07	2,616
5	08	2,668
6	09	2,721
7	10	2,775
8	11	2,830
9	12	2,887
10	13	2,945
11	14	3,004
12	15	3,064
13	16	3,125
14	17	3,188
15	18	3,252
16	19	3,317
17	20	3,383
18	21	3,451
19	22	3,520
20	23	3,590
21	24	3,662
22	25	3,735
23	26	3,810
24	27	3,886
25	28	3,964
26	29	4,043
27	30+	4,043

- (3) Certified public school teachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G"teachers. Certified public school teachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G"teachers.

(c) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "G"teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.



1 Certified psychologists with certification based on academic preparation at the
2 six-year degree level shall receive a salary supplement of one hundred twenty-six dollars
3 (\$126.00) per month in addition to the compensation provided for certified psychologists.
4 Certified psychologists with certification based on academic preparation at the doctoral
5 degree level shall receive a salary supplement of two hundred fifty-three dollars
6 (\$253.00) per month in addition to the compensation provided for certified psychologists.

7 (d) Certified personnel of the public schools who are: (i) classified as
8 "A"teachers; (ii) at the maximum of their pay range on June 30, 1996; and (iii) employed
9 as teachers for the first three pay periods of the 1996-97 school year shall receive a one-
10 time bonus of seven hundred fifty-three dollars (\$753.00), payable at the third payroll
11 period of the 1996-97 school year. Certified personnel of the public schools who are: (i)
12 classified as "G"teachers; (ii) at the maximum of their pay range on June 30, 1996; and
13 (iii) employed as teachers for the first three pay periods of the 1996-97 school year, shall
14 receive a one-time bonus of eight hundred one dollars (\$801.00), payable at the third
15 payroll period of the 1996-97 school year. Certified personnel of the public schools who
16 are: (i) certified based on academic preparation at the six-year degree level; (ii) at the
17 maximum of their pay range on June 30, 1996; and (iii) employed as teachers for the first
18 three pay periods of the 1996-97 school year shall receive a one-time bonus of eight
19 hundred twenty-six dollars (\$826.00), payable at the third payroll period of the 1996-97
20 school year. Certified personnel of the public schools who are: (i) certified based on
21 academic preparation at the doctoral degree level; (ii) at the maximum of their pay range
22 on June 30, 1996; and (iii) employed as teachers for the first three pay periods of the
23 1996-97 school year shall receive a one-time bonus of eight hundred fifty-one dollars
24 (\$851.00), payable at the third payroll period of the 1996-97 school year.

25 (e) Certified personnel of the public schools who are: (i) classified as
26 psychologists with advanced degrees; (ii) at the maximum of their pay range on June 30,
27 1996; and (iii) employed as school psychologists for the first three pay periods of the
28 1996-97 school year, shall receive a one-time bonus of nine hundred ten dollars
29 (\$910.00), payable at the third payroll period of the 1996-97 school year. Certified
30 personnel of the public schools who are: (i) classified as psychologists with doctoral
31 degrees; (ii) at the maximum of their pay range on June 30, 1996; and (iii) employed as
32 school psychologists for the first three pay periods of the 1996-97 school year, shall
33 receive a one-time bonus of nine hundred thirty-seven dollars (\$937.00), payable at the
34 third payroll period of the 1996-97 school year.

35
36 Requested by: Representatives Holmes, Creech, Esposito

37 **SCHOOL-BASED ADMINISTRATOR SALARIES**

38 Sec. 4.12. (a) Funds appropriated to the Reserve for Salary Increases shall be used
39 for the implementation of the salary schedule for school-based administrators as provided
40 in this section. These funds shall be used for State-paid employees only.

41 (b) The salary schedule for school-based administrators shall apply only to
42 principals and assistant principals. The salary schedule for the 1996-97 fiscal year is as
43 follows:



		Asst.							
	Step	Prin.	Prin.I	Prin.II	Prin.III	Prin.IV		Prin.V	Prin.VI Prin. VII
1									
2									
3									
4									
5	0	—	—	—	—	—	—	—	—
6	1	—	—	—	—	—	—	—	—
7	2	—	—	—	—	—	—	—	—
8	3	—	—	—	—	—	—	—	—
9	4	\$2,540	—	—	—	—	—	—	—
10	5	2,591	—	—	—	—	—	—	—
11	6	2,643	—	—	—	—	—	—	—
12	7	2,696	—	—	—	—	—	—	—
13	8	2,750	\$2,750	—	—	—	—	—	—
14	9	2,805	2,805	—	—	—	—	—	—
15	10	2,861	2,861	\$2,918	—	—	—	—	—
16	11	2,918	2,918	2,976	—	—	—	—	—
17	12	2,976	2,976	3,036	\$3,097	—	—	—	—
18	13	3,036	3,036	3,097	3,159	\$3,222	—	—	—
19	14	3,097	3,097	3,159	3,222	3,286	\$3,352	—	—
20	15	3,159	3,159	3,222	3,286	3,352	3,419	—	—
21	16	3,222	3,222	3,286	3,352	3,419	3,487	\$3,557	—
22	17	3,286	3,286	3,352	3,419	3,487	3,557	3,628	\$3,701
23	18	3,352	3,352	3,419	3,487	3,557	3,628	3,701	3,775
24	19	3,419	3,419	3,487	3,557	3,628	3,701	3,775	3,851
25	20	3,487	3,487	3,557	3,628	3,701	3,775	3,851	3,928
26	21	3,557	3,557	3,628	3,701	3,775	3,851	3,928	4,007
27	22	3,628	3,628	3,701	3,775	3,851	3,928	4,007	4,087
28	23	3,701	3,701	3,775	3,851	3,928	4,007	4,087	4,169
29	24	3,775	3,775	3,851	3,928	4,007	4,087	4,169	4,252
30	25	3,851	3,851	3,928	4,007	4,087	4,169	4,252	4,337
31	26	3,928	3,928	4,007	4,087	4,169	4,252	4,337	4,424
32	27	4,007	4,007	4,087	4,169	4,252	4,337	4,424	4,512
33	28	4,087	4,087	4,169	4,252	4,337	4,424	4,512	4,602
34	29	4,169	4,169	4,252	4,337	4,424	4,512	4,602	4,694
35	30	4,252	4,252	4,337	4,424	4,512	4,602	4,694	4,788
36	31	4,337	4,337	4,424	4,512	4,602	4,694	4,788	4,884
37	32	—	4,424	4,512	4,602	4,694	4,788	4,884	4,982
38	33	—	—	4,602	4,694	4,788	4,884	4,982	5,082
39	34	—	—	4,694	4,788	4,884	4,982	5,082	5,184
40	35	—	—	—	4,884	4,982	5,082	5,184	5,288
41	36	—	—	—	4,982	5,082	5,184	5,288	5,394



1	37	—	—	—	—	5,184	5,288	5,394	5,502
2	38	—	—	—	—	—	5,394	5,502	5,612
3	39	—	—	—	—	—	—	5,612	5,724
4	40	—	—	—	—	—	—	5,724	5,838
5	41	—	—	—	—	—	—	—	5,955.

(c) The appropriate classification for placement of principals and assistant principals on the salary schedule shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Less than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	More than 65 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal.

(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

(f) There shall be no State requirement that superintendents in each local school unit shall receive in State-paid salary at least one percent (1%) more than the highest paid principal receives in State salary in that school unit: Provided, however, the additional State-paid salary a superintendent who was employed by a local school administrative unit for the 1992-93 fiscal year received because of that requirement shall not be reduced because of this subsection for subsequent fiscal years that the superintendent is employed by that local school administrative unit so long as the superintendent is entitled to at least that amount of additional State-paid salary under the rules in effect for the 1992-93 fiscal year.

(g) Longevity pay for principals and assistant principals shall be as provided for State employees.

(h) (1) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall



be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

(2) If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subdivision applies to all transfers on or after the ratification date of this act, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subdivision for one calendar year following the date of the merger.

(i) Except as provided in subsection (h) of this section, the salary of a principal or assistant principal shall not be less for the 1996-97 fiscal year than it was for the 1993-94 fiscal year solely as a result of placement on the salary schedule established in this section.

Requested by: Representatives Holmes, Creech, Esposito

SCHOOL CENTRAL OFFICE SALARIES

Sec. 4.13. (a) The following monthly salary ranges apply to public school superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 1996-97 fiscal year:

- | | | |
|-----|---------------------------|---------|
| (1) | School Administrator I: | \$2,804 |
| | - \$4,511 | |
| (2) | School Administrator II: | \$2,976 |
| | - \$4,788 | |
| (3) | School Administrator III: | |
| | \$3,158 - \$5,081 | |
| (4) | School Administrator IV: | \$3,286 |
| | - \$5,287 | |
| (5) | School Administrator V: | \$3,418 |
| | - \$5,501 | |
| (6) | School Administrator VI: | \$3,627 |
| | - \$5,838 | |
| (7) | School Administrator VII: | |
| | \$3,774 - \$6,074 | |

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer, within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which



1 an employee is placed shall be included in the contract of any employee hired on or after
2 July 1, 1996.

3 (b) The following monthly salary ranges apply to public school superintendents
4 for the 1996-97 fiscal year:

5 (1) Superintendent I (Up to 2,500 ADM): \$4,006 - \$6,446

6 (2) Superintendent II (2,501 - 5,000 ADM): \$4,251 - \$6,840

7 (3) Superintendent III (5,001 - 10,000 ADM): \$4,511 - \$7,259

8 (4) Superintendent IV (10,001 - 25,000 ADM): \$4,788 - \$7,704

9 (5) Superintendent V (Over 25,000 ADM): \$5,081 - \$8,175

10 The local board of education shall determine the appropriate category and placement for
11 the superintendent based on the average daily membership of the local school
12 administrative unit and within funds appropriated by the General Assembly for central
13 office administrators and superintendents.

14 Notwithstanding the provisions of this subsection, a local board of education
15 may pay an amount in excess of the applicable range to a superintendent who is entitled
16 to receive the higher amount under Section 28.11(f) of this act.

17 (c) Longevity pay for superintendents, assistant superintendents, associate
18 superintendents, directors/coordinators, supervisors, and finance officers shall be as
19 provided for State employees.

20 (d) Superintendents, assistant superintendents, associate superintendents,
21 directors/coordinators, supervisors, and finance officers with certification based on
22 academic preparation at the six-year degree level shall receive a salary supplement of one
23 hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided
24 for pursuant to this section. Superintendents, assistant superintendents, associate
25 superintendents, directors/coordinators, supervisors, and finance officers with
26 certification based on academic preparation at the doctoral degree level shall receive a
27 salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to
28 the compensation provided for under this section.

29 (e) The State Board shall not permit local school administrative units to
30 transfer State funds from other funding categories for salaries for public school central
31 office administrators.

32 (f) The Director of the Budget shall transfer from the Reserve for Salary
33 Increases for fiscal year 1996-97 funds necessary to provide an average annual salary
34 increase of four percent (4%), including funds for the employer's retirement and social
35 security contributions, commencing July 1, 1996, for all permanent full-time personnel
36 paid from the Central Office Allotment. The State Board of Education shall allocate these
37 funds to local school administrative units. The local boards of education shall establish
38 guidelines for providing their salary increases to these personnel.

39 Requested by: Representatives Holmes, Creech, Esposito

40 **NONCERTIFIED PUBLIC SCHOOL EMPLOYEES' SALARY INCREASE**

41 Sec. 4.14. (a) The Director of the Budget may transfer from the Reserve for Salary
42 Increases created in this act for fiscal year 1996-97 funds necessary to provide a salary
43



1 increase of four percent (4%), including funds for the employer's retirement and social
2 security contributions, commencing July 1, 1996, for all noncertified public school
3 employees, except school bus drivers, whose salaries are supported from the State's
4 General Fund. These funds shall not be used for any purpose other than for the salary
5 increases and necessary employer contributions provided by this subsection.

6 (b) The fiscal year 1995-96 pay rates adopted by local boards of education for
7 school bus drivers shall be increased by at least four percent (4%) on and after July 1,
8 1996, to the extent that such rates of pay are supported by the allocation of State funds
9 from the State Board of Education. Local boards of education shall increase the rates of
10 pay for all school bus drivers who were employed during fiscal year 1995-96 and who
11 continue their employment for fiscal year 1996-97 by at least four percent (4%) on and
12 after July 1, 1996. The Director of the Budget may transfer from the salary increase
13 reserve fund created in this act for fiscal year 1996-97 funds necessary to provide the
14 salary increases for school bus drivers whose salaries are supported from the State's
15 General Fund in accordance with the provisions of this subsection.

16
17 Requested by: Representatives Holmes, Creech, Esposito

18 **STUDY COMMISSION ON THE COMPREHENSIVE COMPENSATION**
19 **SYSTEM**

20 Sec. 4.15. (a) The Study Commission on the Comprehensive Compensation
21 System is created. The Commission shall consist of nine members: three Representatives
22 appointed by the Speaker of the House of Representatives, three Senators appointed by
23 the President Pro Tempore of the Senate, and three members appointed by the Governor.
24 The Speaker of the House of Representatives shall designate one Representative as
25 cochair and the President Pro Tempore of the Senate shall designate one Senator as
26 cochair. Vacancies in the membership of the Commission shall be filled by the same
27 appointing officer who made the initial appointment.

28 (b) The Commission shall:

- 29 (1) Evaluate the Comprehensive Compensation System established
30 in Article 2 of Chapter 126 of the General Statutes; and
31 (2) Determine a methodology for funding the pay plan for State
32 employees at varying levels of appropriations to fund State pay
33 increases.

34 The Commission shall submit a final report of its findings and recommendations to the
35 General Assembly on or before the first day of the 1997 Session by filing the report with
36 the Speaker of the House of Representatives and the President Pro Tempore of the
37 Senate. Upon filing its final report, the Commission shall terminate.

38 (c) The Commission, while in the discharge of official duties, may exercise all
39 the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through
40 G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs.
41 The Commission may meet in the Legislative Building or the Legislative Office
42 Building.



(d) Members of the Commission who are legislators shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Other members of the Commission shall receive reimbursement for travel expenses at the rates allowed by G.S. 138-6.

(e) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the commission upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(f) All State departments and agencies shall furnish the Commission with any information in their possession or available to them.

Requested by: Representatives Holmes, Creech, Esposito

POSTRETIREMENT BENEFIT INCREASES

Sec. 4.16. (a) G.S. 135-5 is amended by adding a new subsection to read:

"(bbb) From and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four percent (4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996."

(b) G.S. 135-65 is amended by adding a new subsection to read:

"(q) From and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four percent (4%) of the allowance payable on July 1, 1995. Furthermore, from and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996."

(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(k) In accordance with subsection (a) of this section, from and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four percent (4%) of the allowance payable on January 1, 1996. Furthermore, from and after July 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four percent (4%) of the allowance payable as determined by the Board of Trustees based upon the



1 number of months that a retirement allowance was paid between January 1, 1996, and
2 June 30, 1996."

3 (d) G.S. 128-27 is amended by adding a new subsection to read:

4 "(rr) From and after July 1, 1996, the retirement allowance to or on account of
5 beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased
6 by four percent (4%) of the allowance payable on July 1, 1995, in accordance with G.S.
7 128-27(k). Furthermore, from and after July 1, 1996, the retirement allowance to or on
8 account of beneficiaries whose retirement commenced after July 1, 1995, but before June
9 30, 1996, shall be increased by a prorated amount of four percent (4%) of the allowance
10 payable as determined by the Board of Trustees based upon the number of months that a
11 retirement allowance was paid between July 1, 1995, and June 30, 1996."

12
13 Requested by: Representatives Holmes, Creech, Esposito

14 **SALARY-RELATED CONTRIBUTIONS/EMPLOYERS**

15 Sec. 4.17. Section 7.1(b) of Chapter 324 of the 1995 Session Laws, as amended
16 by Section 7.22A of Chapter 507 of the 1995 Session Laws, reads as rewritten:

17 "(b) Effective July 1, 1995, July 1, 1996, the State's employer contribution rates
18 budgeted for retirement and related benefits as a percentage of covered salaries for the
19 1995-96 fiscal year are (i) ten and eighty-three hundredths percent (10.83%) - Teachers
20 and State Employees; (ii) fifteen and eighty-three hundredths percent (15.83%) - State
21 Law Enforcement Officers; (iii) nine and eighteen hundredths percent (9.18%) -
22 University Employees' Optional Retirement Program; (iv) twenty-two and sixty-five
23 hundredths percent (22.65%) - Consolidated Judicial Retirement System; and (v) ~~twenty-~~
24 ~~three and twenty-seven hundredths percent (23.27%)~~ twenty-four and forty-three
25 hundredths percent (24.43%) - Legislative Retirement System. Each of the foregoing
26 contribution rates includes two percent (2%) for hospital and medical benefits. The rate
27 for State Law Enforcement Officers includes five percent (5%) for the Supplemental
28 Retirement Income Plan. The rates for Teachers and State Employees, State Law
29 Enforcement Officers, and for the University Employees' Optional Retirement Program
30 includes fifty-two hundredths percent (0.52%) for the Disability Income Plan."

31
32 Requested by: Representatives Holmes, Creech, Esposito, Dockham

33 **STATE EMPLOYEE HEALTH BENEFIT PLAN/PREEXISTING HEALTH**
34 **CONDITIONS**

35 Sec. 4.18. (a) G.S. 135-40.1(15) reads as rewritten:

36 "(15) Preexisting Condition. - A condition, disease, illness or injury which
37 existed or had its beginning to any degree, whether diagnosed or not,
38 diagnosed and treated within six months prior to the effective date of
39 coverage."

40 (b) G.S. 135-40.3(b) is amended by adding a new subdivision to read:

41 "(5) To administer the 12-month waiting period for preexisting conditions
42 under this Article, the Plan must give credit against the 12-month period
43 for the time that a person was covered under a previous plan if the



1 previous plan's coverage was continuous to a date not more than 60 days
2 before the effective date of coverage. As used in this subdivision, a
3 'previous plan' means any policy, certificate, contract, or any other
4 arrangement provided by any accident and health insurer, any hospital
5 or medical service corporation, any health maintenance organization,
6 any preferred provider organization, any multiple employer welfare
7 arrangement, any self-insured health benefit arrangement, any
8 governmental health benefit or health care plan or program, or any other
9 health benefit arrangement."

10 (c) This section is effective July 1, 1995.

11 12 **PART 5. MISCELLANEOUS PROVISIONS**

13 14 **EXECUTIVE BUDGET ACT APPLIES**

15 Sec. 5.1. The provisions of the Executive Budget Act, Chapter 143, Article 1
16 of the General Statutes are reenacted and shall remain in full force and effect and are
17 incorporated in this act by reference.

18 19 **MOST TEXT APPLIES ONLY TO 1996-97**

20 Sec. 5.2. Except for statutory changes or other provisions that clearly indicate
21 an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this
22 act apply only to funds appropriated for, and activities occurring during, the 1996-97
23 fiscal year.

24 25 **1995-96 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

26 Sec. 5.3. (a) Except where expressly repealed or amended by this act, the
27 provisions of Chapters 324 and 507 of the 1995 Session Laws remain in effect.

28 (b) Notwithstanding any modifications by this act in the amounts appropriated,
29 except where expressly repealed or amended, the limitations and directions for the 1995-
30 96 fiscal year in Chapters 324 and 507 of the 1995 Session Laws that applied to
31 appropriations to particular agencies or for particular purposes apply to the newly enacted
32 appropriations and budget reductions of this act for those same particular purposes.

33 34 **EFFECT OF HEADINGS**

35 Sec. 5.4. The headings to the parts and sections of this act are a convenience to
36 the reader and are for reference only. The headings do not expand, limit, or define the
37 text of this act.

38 39 **SEVERABILITY CLAUSE**

40 Sec. 5.5. If any section or provision of this act is declared unconstitutional or
41 invalid by the courts, it does not affect the validity of this act as a whole or any part other
42 than the part so declared to be unconstitutional or invalid.



1 **EFFECTIVE DATE**

2 Sec. 5.6. Except as otherwise provided, this act becomes effective July 1,
3 1996.



GENERAL ASSEMBLY OF NORTH CAROLINA

SECOND EXTRA SESSION 1996

H

2

HOUSE BILL 53

Senate Appropriations Committee Substitute Adopted 7/16/96

Short Title: Modify 1996-97 Budget.

(Public)

Sponsors:

Referred to: Pensions and Retirement/Insurance/State Personnel.

July 10, 1996

1 A BILL TO BE ENTITLED
 2 AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS
 3 APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL
 4 IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER
 5 CHANGES IN THE BUDGET OPERATION OF THE STATE.

6 The General Assembly of North Carolina enacts:

7
 8 **PART 1. INTRODUCTION AND TITLE OF ACT**

9
 10 **INTRODUCTION**

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

17
 18 **TITLE OF ACT**



Sec. 1.1. This act shall be known as the Current Operations Appropriations Act of 1996.

PART 2. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/GENERAL FUND

Sec. 2. 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 biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1996-97 fiscal year.

<u>Current Operations - General Fund</u>		<u>1996-97</u>
General Assembly		\$
110,000		
Judicial		Department
		6,2
41,167		
Office of the Governor		
01. Office of the Governor (31,388)		
02. Office of State Budget and Management(37,689)		
03. Office of State Planning(5,000)		
04. Housing Finance Agency 3,500,000		
Department of Secretary of State		437
,048		
Department of State		Treasurer
		2,2
00,000		
Department of Public		Education
		103
,121,116		
Department of Justice		930
,596		



1				
2	Department	of	Administration	
3			(27	
4	0,049)			
5				
6	Department	of	Agriculture	
7			1,0	
8	28,437			
9				
10	Department	of	Labor	
11			419	
12	,183			
13				
14	Department	of	Insurance	
15			1,8	
16	95,364			
17				
18	Department of Environment, Health, and			
19	Natural		Resources	
20			24,	
21	227,428			
22				
23	Office	of	Administrative	Hearings
24				262
25	,754			
26				
27	Department of Human Resources			
28	01. Office of the Secretary	897,466		
29	02. Division of Aging	5,150,231		
30	03. Division of Child Development	9,804,765		
31	04. Division of Services for the			
32	Deaf and Hard of Hearing	(148,984)		
33	05. Division of Social Services	(5,237,841)		
34	06. Division of Medical Assistance	(13,609,703)		
35	07. Division of Services			
36	for the Blind	(36,419)		
37	08. Division of Mental Health,			
38	Developmental Disabilities, and			
39	Substance Abuse Services	(6,968,927)		
40	09. Division of Facility Services	431,977		
41	10. Division of Vocational			
42	Rehabilitation Services	978,310		
43	11. Division of Youth Services	230,288		



Total Department of Human Resources
(8,5

08,837)

Department of Correction
(37,

798,668)

Department of Commerce

01. Commerce 11,503,334

02. MCNC (14,000,000)

03. Rural Economic Development
Center 2,650,000

04. Biotechnology Center 1,000,000

Department of Revenue
1,4

70,587

Department of State Auditor
175

,000

Department of Cultural Resources
4,4

66,303

Department of Crime Control and Public Safety
382

,378

Office of the State Controller
8,9

35,985

University of North Carolina - Board
of Governors

01. General Administration 13,000,000

02. University Institutional
Programs 28,472,013

03. Related Educational Programs 3,880,160

04. University of North Carolina



1	at Chapel Hill			
2	a. Academic Affairs	(422,425)		
3	b. Health Affairs	(29,424)		
4	05. North Carolina State University			
5	at Raleigh			
6	a. Academic Affairs	(246,316)		
7	06. University of North Carolina at			
8	Greensboro	(114,556)		
9	07. University of North Carolina at			
10	Charlotte	(5,000)		
11	08. University of North Carolina at			
12	Asheville	(4,500)		
13	09. North Carolina Agricultural and			
14	Technical State University	(438,523)		
15	10. Western Carolina University	(91,286)		
16	11. Appalachian State University	(203,487)		
17	12. University of North Carolina at Pembroke	(3,190)		
18	13. Winston-Salem State University	(500)		
19	14. Elizabeth City State			
20	University	(125,503)		
21	15. Fayetteville State University	(9,000)		
22	16. North Carolina Central			
23	University	(67,779)		
24	17. North Carolina School of the			
25	Arts	(317,543)		
26	18. North Carolina School of			
27	Science and Mathematics	(28,036)		
28	19. UNC Hospitals at Chapel Hill	(4,300,000)		
29	Total University of North			
30	Carolina	-	Board	of Governors
31				38,
32	945,105			
33				
34	Department	of	Community	Colleges
35				19,
36	576,317			
37				
38	State	Board	of	Elections
39				175
40	,000			
41				



GENERAL ASSEMBLY OF NORTH CAROLINA

1996

1	Contingency	and	Emergency
2			5,0
3	76,466		
4			
5	Salary	Adjustment	Fund
6			5,0
7	00,000		
8			
9	Reserve	for	Compensation
10			Increase
11	,732,066		266
12			
13	Reserve	for	Military
14			Affairs
15	,000		200
16			
17	Reserve	for	Moving
18			Expenses
19	00,000		4,0
20			
21	Reduction	in	Postage
22			(30
23	0,000)		
24			
25	Retirement	Rate	Adjustment
26			(32
27	5,600)		
28			
29	Criminal	Justice	Information
30			System
31	,000		500
32			
33	Reserve	for	Structured
34			Sentencing
35	33,800		1,4
36			
37	GRAND TOTAL CURRENT OPERATIONS –		
38	GENERAL		FUND
39			\$45
40	5,318,203		
41			



GENERAL ASSEMBLY OF NORTH CAROLINA

1996

<u>Capital</u>	<u>Improvements</u>	<u>-</u>	<u>General</u>	<u>Fund</u>
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1996-1997

Department of Administration

Prison Construction

1. Southern Piedmont Area Unit \$ 9,000,000

2. Modular Housing Units 5,000,000

3. Prison Unit Improvements 1,600,000

4. Plan and Design Facilities 4,350,000

Department of Environment, Health,
and Natural Resources

1. Water Resources 8,705,000

2. Museum of Natural Sciences 500,000

University of North Carolina -

Board

of

Governors

9,000,000

Department of Crime Control
and Public Safety

1. National Guard Armory 87,567

TOTAL \$ 38,242,567

PART 3. CURRENT OPERATIONS/HIGHWAY FUND

Sec. 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1997, according to the following schedule:

Current Operations/Highway Fund1996-97

Department of Transportation

01. Administration \$ 960,000

02. Construction and Maintenance 2,206,000

03. Division of Motor Vehicles 1,894,190

04. Reserve for Salary Increases 14,150,000

Department of Public Instruction

1,700,000

1 on the system as of the date of the report and the long-term costs of implementing the
2 system statewide.

3 (d) Of the funds appropriated in this act to the reserve for the Criminal Justice
4 Information Network Governing Board, the sum of two hundred thousand dollars
5 (\$200,000) shall be used to support the operation of the Criminal Justice Information
6 Network Governing Board, including staff salaries and benefits and related expenses, and
7 the sum of three hundred thousand dollars (\$300,000) shall be used to fund the
8 development of data standards for the Network. Funds appropriated to the reserve for the
9 Criminal Justice Information Network Governing Board shall not revert.

11 PART 24. DEPARTMENT OF HUMAN RESOURCES

13 Requested by: Senator Martin of Guilford

14 MEDICAID

15 Sec. 24. Section 23.14 of Chapter 324, 1995 Session Laws, reads as rewritten:

16 "Sec. 23.14. (a) Funds appropriated in this act for services provided in accordance
17 with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy
18 and the medically needy. Funds appropriated for these services shall be expended in
19 accordance with the following schedule of services and payment bases. All services and
20 payments are subject to the language at the end of this subsection.

21 Services and payment bases:

- 22 (1) Hospital-Inpatient - Payment for hospital inpatient services will be
23 prescribed in the State Plan as established by the Department of Human
24 Resources. Administrative days for any period of hospitalization shall
25 be limited to a maximum of three days.
- 26 (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a
27 prospective reimbursement plan as established by the Department of
28 Human Resources.
- 29 (3) Nursing Facilities - Payment for nursing facility services will be
30 prescribed in the State Plan as established by the Department of Human
31 Resources. Nursing facilities providing services to Medicaid recipients
32 who also qualify for Medicare, must be enrolled in the Medicare
33 program as a condition of participation in the Medicaid program. State
34 facilities are not subject to the requirement to enroll in the Medicare
35 program.
- 36 (4) Intermediate Care Facilities for the Mentally Retarded - As prescribed
37 in the State Plan as established by the Department of Human Resources.
- 38 (5) Drugs - Drug costs as allowed by federal regulations plus a professional
39 services fee per month excluding refills for the same drug or generic
40 equivalent during the same month. Reimbursement shall be available
41 for up to six prescriptions per recipient, per month, including refills.
42 Payments for drugs are subject to the provisions of subsection (f) of this
43 section and to the provisions at the end of subsection (a) of this section,



1 or in accordance with the State Plan adopted by the Department of
2 Human Resources consistent with federal reimbursement regulations.
3 Payment of the professional services fee shall be made in accordance
4 with the Plan adopted by the Department of Human Resources,
5 consistent with federal reimbursement regulations. The professional
6 services fee shall be five dollars and sixty cents (\$5.60) per prescription.
7 Adjustments to the professional services fee shall be established by the
8 General Assembly.

- 9 (6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified
10 Nurse Midwife Services - Fee schedules as developed by the
11 Department of Human Resources. Payments for dental services are
12 subject to the provisions of subsection (g) of this section.
- 13 (7) Community Alternative Program, EPSDT Screens - Payment to be
14 made in accordance with rate schedule developed by the Department of
15 Human Resources.
- 16 (8) Home Health and Related Services, Private Duty Nursing, Clinic
17 Services, Prepaid Health Plans, Durable Medical Equipment - Payment
18 to be made according to reimbursement plans developed by the
19 Department of Human Resources.
- 20 (9) Medicare Buy-In - Social Security Administration premium.
- 21 (10) Ambulance Services - Uniform fee schedules as developed by the
22 Department of Human Resources.
- 23 (11) Hearing Aids - Actual cost plus a dispensing fee.
- 24 (12) Rural Health Clinic Services - Provider-based - reasonable cost;
25 nonprovider based - single cost reimbursement rate per clinic visit.
- 26 (13) Family Planning - Negotiated rate for local health departments. For
27 other providers - see specific services, for instance, hospitals,
28 physicians.
- 29 (14) Independent Laboratory and X-Ray Services - Uniform fee schedules as
30 developed by the Department of Human Resources.
- 31 (15) Optical Supplies - One hundred percent (100%) of reasonable wholesale
32 cost of materials.
- 33 (16) Ambulatory Surgical Centers - Payment as prescribed in the
34 reimbursement plan established by the Department of Human
35 Resources.
- 36 (17) Medicare Crossover Claims - An amount up to the actual coinsurance or
37 deductible or both, in accordance with the Plan, as approved by the
38 Department of Human Resources.
- 39 (18) Physical Therapy and Speech Therapy - Services limited to EPSDT
40 eligible children. Payments are to be made only to ~~the Children's~~
41 ~~Special Health Services program~~ qualified providers at rates negotiated
42 by the Department of Human Resources.



- (19) Personal Care Services - Payment in accordance with Plan approved by the Department of Human Resources.
- (20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.
- (21) Hospice - Services may be provided in accordance with Plan developed by the Department of Human Resources.
- (22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a Plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with Plan approved by the Department of Human Resources.
- (24) Health Insurance Premiums - Payments to be made in accordance with the Plan adopted by the Department of Human Resources consistent with federal regulations.
- (25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of Human Resources. Providers of these services must be certified as meeting program standards of the Department of Environment, Health, and Natural Resources.
- (26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.



(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families With Dependent Children Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and the Standard of Need for Aid to Families with Dependent Children shall be as follows:

<u>Categorically Needy</u>			<u>Medically Needy</u>		
Family	Standard	AFDC Payment			
<u>Size</u>	<u>of Need</u>	<u>Level*</u>	<u>AA, AB, AD*</u>		
1	\$ 4,344	\$ 2,172	\$ 2,900		
2	5,664	2,832	3,800		
3	6,528	3,264	4,400		
4	7,128	3,564	4,800		
5	8,376	4,185	6,000		
6	8,952	4,476	6,000		
7	9,256	4,680	6,300		
8					

*Aid to Families With Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families With Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of Human Resources may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

<u>Monthly Net Wages</u>	<u>Monthly Incentive Allowance</u>
\$1.00 to \$100.99	Up to \$50.00
\$101.00 - \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00.



(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, 'dispense as written' or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's 'dispense as written' order as noted above.

As used in this subsection 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other similar processes in order to improve cost containment.

(k) Cost Containment Programs. The Department of Human Resources, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(l) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(m) The Department of Human Resources shall provide Medicaid to 19-, 20-, and 21-year olds in accordance with federal rules and regulations.

(n) The Department of Human Resources shall provide coverage to pregnant women and to children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits~~; benefits.



- 1 (2) Infants under the age of 1 with family incomes equal to or less than one
2 hundred eighty-five percent (185%) of the federal poverty guidelines as
3 revised each April 1 shall be covered for Medicaid ~~benefits; benefits.~~
4 (3) Children aged 1 through 5 with family incomes equal to or less than one
5 hundred thirty-three percent (133%) of the federal poverty guidelines as
6 revised each April 1 shall be covered for Medicaid ~~benefits; benefits.~~
7 (4) Children aged 6 through 18 with family incomes equal to or less than
8 the federal poverty guidelines as revised each April 1 shall be covered
9 for Medicaid benefits. ~~Services to pregnant women eligible under this~~
10 ~~section continue throughout the pregnancy but include only those~~
11 ~~related to pregnancy and to those other conditions determined by the~~
12 ~~Department as conditions that may complicate pregnancy. In order to~~
13 ~~reduce county administrative costs and to expedite the provision of~~
14 ~~medical services to pregnant women, to infants, and to children eligible~~
15 ~~under this section, no resources test shall be applied; and~~
16 (5) The Department of Human Resources shall provide Medicaid coverage
17 for adoptive children with special or rehabilitative needs regardless of
18 the adoptive family's income.

19 Services to pregnant women eligible under this subsection continue throughout the
20 pregnancy but include only those related to pregnancy and to those other conditions
21 determined by the Department as conditions that may complicate pregnancy. In order to
22 reduce county administrative costs and to expedite the provision of medical services to
23 pregnant women, to infants, and to children described in subdivisions (3) and (4) of this
24 subsection, no resources test shall be applied.

25 (o) The Department of Human Resources may use Medicaid funds budgeted from
26 program services to support the cost of administrative activities to the extent that these
27 administrative activities produce a net savings in services requirements. Administrative
28 initiatives funded by this section shall be first approved by the Office of State Budget and
29 Management.

30 (p) The Department of Human Resources shall submit a monthly status report on
31 expenditures for acute care and long-term care services to the Fiscal Research Division
32 and to the Office of State Budget and Management. This report shall include an analysis
33 of budgeted versus actual expenditures for eligibles by category and for long-term care
34 beds. In addition, the Department shall revise the program's projected spending for the
35 current fiscal year and the estimated spending for the subsequent fiscal year on a
36 quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal
37 Research Division and to the Office of State Budget and Management no later than the
38 third Thursday of the month.

39 (q) The Division of Medical Assistance, Department of Human Resources, may
40 provide incentives to counties that successfully recover fraudulently spent Medicaid
41 funds by sharing State savings with counties responsible for the recovery of the
42 fraudulently spent funds.



(r) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Human Resources, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing.

(s) The Division of Medical Assistance, Department of Human Resources, may administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5 using temporary rules pending approval of final rules promulgated pursuant to Chapter 150B of the General Statutes.

(t) The Department of Human Resources may adopt temporary rules according to the procedures established in G.S. 150B-21.1 when it finds that such rules are necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse."

Requested by: Senator Martin of Guilford

NONMEDICAID REIMBURSEMENT CHANGES

Sec. 24.1. Section 23.16 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.5 of Chapter 507, 1995 Session Laws, reads as rewritten:

"Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program. Hospitals that provide psychiatric inpatient care for Thomas S. class members or adults with mental retardation and mental illness may be paid an additional incentive payment not to exceed fifteen percent (15%) of their regular daily per diem reimbursement.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Medical Eye

All



	<u>Family Size</u>	<u>Care Adults</u>	<u>Rehabilitation</u>	<u>Other</u>
1	1	\$ 4,860	\$ 8,364	\$ 4,200
2	2	5,940	10,944	5,300
3	3	6,204	13,500	6,400
4	4	7,284	16,092	7,500
5	5	7,824	18,648	7,900
6	6	8,220	21,228	8,300
7	7	8,772	21,708	8,800
8	8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the ~~Clozaril~~ Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the ~~Clozaril~~ Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of ~~Clozaril~~ atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the ~~Clozaril~~ Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income State Participation Client Participation
(% of poverty)

0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%
141-160%	75%	25%
161-180%	65%	35%
191-180%	65%	35%
<u>181-200%</u>	<u>55%</u>	<u>45%</u>
201-220%	45%	55%
221-240%	35%	65%
241-260%	25%	75%
261-280%	15%	85%
281-300%	5%	95%
301%-over	0%	100%.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."



Requested by: Senator Martin of Guilford

MEDICAID SUBROGATION CHANGE

Sec. 24.1A. (a) G.S. 108A-57 reads as rewritten:

"§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of such this assistance, or of ~~his~~ the beneficiary's personal representative, ~~his~~ heirs, or the administrator or executor of ~~his~~ the estate, against any person. ~~It shall be the responsibility of the~~ The county attorney, or an attorney retained by the county ~~and/or or~~ the State or both, or an attorney retained by the beneficiary of the assistance if ~~such~~ this attorney has actual notice of payments made under this Part ~~to~~ shall enforce this ~~section, and said section.~~ An attorney retained by the county or the State or both shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department; provided, however, that any Department. Any attorney retained by the beneficiary of the assistance shall be compensated for his services distribute proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of the injury or death in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death: priority:

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the gross amount obtained or ~~recovered to which the right of subrogation applies; recovered;~~
- (3) Third to the payment to the Department of the amount of assistance received by the beneficiary ~~as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one third of the amount obtained or recovered to which the right of subrogation applies; beneficiary; and~~
- (4) Fourth to the payment of any amount remaining to the beneficiary or his the beneficiary's personal representative.

The United States and the State ~~of North Carolina shall be~~ is entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of ~~such~~ the sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) ~~It shall be~~ is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

(b) This section becomes effective October 1, 1996.

Requested by: Senator Martin of Guilford

VOCATIONAL REHABILITATION SUBROGATION CHANGE

Sec. 24.1B. (a) G.S. 143-547 reads as rewritten:

"§ 143-547. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or ~~his~~ the beneficiary's personal representative, his heirs, or the administrator or executor of his estate, against any person; provided, however, that any person. Any attorney retained by the beneficiary of the assistance shall ~~be compensated for his services distribute proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death: priority:~~

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the gross amount obtained or ~~recovered to which the right of subrogation applies; recovered;~~
- (3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party ~~to for which the a right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; recovered; and~~
- (4) Fourth to the payment of any amount remaining to the beneficiary or ~~his~~ the beneficiary's personal representative.

The United States and the State of North Carolina ~~shall be~~ is entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of ~~such the~~ sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) In furnishing a person rehabilitation services, including medical case services under this Chapter, the Division of Vocational Rehabilitation Services is subrogated to the person's right of recovery from:

- (1) Personal insurance;
- (2) Worker's Compensation;
- (3) Any other person or personal injury caused by the other person's negligence or wrongdoing; or
- (4) Any other source.



1 (c) The Division of Vocational Rehabilitation Services' right to subrogation is
2 limited to the cost of the rehabilitation services provided by or through the Division for
3 which a financial needs test is a condition of the service provisions. Those services that
4 are provided without a financial needs test are excluded from these subrogation rights.

5 (d) The Division of Vocational Rehabilitation Services may totally or partially
6 waive subrogation rights when the Division finds that enforcement would tend to defeat
7 the client's process of rehabilitation or when client assets can be used to offset additional
8 Division costs.

9 (e) The Division of Vocational Rehabilitation Services may adopt rules for the
10 enforcement of its rights of subrogation.

11 (f) It is a Class 1 misdemeanor for a person seeking or having obtained assistance
12 under this Part for himself or another to willfully fail to disclose to the Division of
13 Vocational Rehabilitation Services or its attorney the identity of any person or
14 organization against whom the recipient of assistance has a right of recovery, contractual
15 or otherwise."

16 (b) This section becomes effective October 1, 1996.

17
18 Requested by: Senator Martin of Guilford

19 **THOMAS S.**

20 Sec. 24.4. Section 23.21 of Chapter 324 of the 1995 Session Laws reads as
21 rewritten:

22 "Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this
23 act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S.
24 Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty,
25 shall be expended only for programs serving Thomas S. Class members or for services
26 for those clients who are:

27 (1) Adults with mental retardation, or who have been treated as if they had
28 mental retardation, who were admitted to a State psychiatric hospital on
29 or after March 22, 1984, and who are included on the Division of
30 Mental Health, Developmental Disabilities, and Substance Abuse
31 Services' official list of prospective Class members;

32 (2) Adults with mental retardation who have a documented history of State
33 psychiatric hospital admissions regardless of admission date and who,
34 without funding support, have a good probability of being readmitted to
35 a State psychiatric hospital;

36 (3) Adults with mental retardation who have never been admitted to a State
37 psychiatric hospital but who have a documented history of behavior
38 determined to be of danger to self or others that results in referrals for
39 inpatient psychiatric treatment and who, without funding support, have a
40 good probability of being admitted to a State psychiatric hospital; or

41 (4) Adults who are included on the Division of Mental Health,
42 Developmental Disabilities, and Substance Abuse Services' official list
43 of prospective Class members and have yet to be confirmed as Class



1 members, who currently reside in the community, and who have a good
2 probability of being admitted to a facility licensed as a 'home for the
3 aged and disabled'.

4 No more than five percent (5%) of the funds appropriated in this act for the Thomas S.
5 program shall be used for clients meeting subdivisions (2), (3), or (4) of this subsection.

6 (b) To ensure that Thomas S. Class members are appropriately served, no State
7 funds shall be expended on placement and services for Thomas S. Class members except:

8 (1) Funds specifically appropriated by the General Assembly for the
9 placement and services of Thomas S. Class members; and

10 (2) Funds for placement and services for which Thomas S. Class members
11 are otherwise eligible.

12 (b1) Thomas S. funds may be expended to support services for Thomas S. Class
13 members in adult care homes when the service needs of individual Class members in
14 these homes cannot be met via the established maximum adult care home rate.

15 (c) The Department of Human Resources shall continue to implement a
16 prospective unit cost reimbursement system and shall ensure that unit cost rates reflect
17 reasonable costs by conducting cost center service type rate comparisons and cost center
18 line item budget reviews as may be necessary.

19 (d) Reporting requirements. The Department of Human Resources shall submit by
20 April 1 of each fiscal year a report to the General Assembly on the progress achieved in
21 serving members and prospective members of the Thomas S. Class. The report shall
22 include the following:

23 (1) The number of Thomas S. clients confirmed as Class members;

24 (2) ~~The number of prospective Class members evaluated;~~

25 (3) ~~The number of prospective Class members awaiting evaluation;~~

26 (3a) The number of individuals identified as prospective Class members;

27 (4) The number of Class members or prospective Class members added in
28 the preceding 12 months due to their admission to a State psychiatric
29 hospital;

30 (5) A description of the types of treatment services provided to Class
31 members; and

32 (6) An analysis of the use of funds appropriated for the Class.

33 (e) Notwithstanding any other provision of law, if the Department of Human
34 Resources determines that a local program is not providing minimally adequate services
35 to members of the Class identified in Thomas S., et al. v. Britt, formerly Thomas S., et al.
36 v. Flaherty, or does not show a willingness to do so, the Department may ensure the
37 provision of these services through contracts with public or private agencies or by direct
38 operation by the Department of these programs."

39
40 Requested by: Senator Martin of Guilford

41 **THOMAS S. FUNDS**

42 Sec. 24.4A. If Thomas S. funds are not sufficient, then notwithstanding G.S.
43 143-16.3 and G.S. 143-23, the Director of the Budget may use funds available to the



1 In the event that there is a conflict between the line item budget certified by the
2 Director of the Budget and the budget enacted by the General Assembly, the budget
3 enacted by the General Assembly shall prevail.

4
5 Requested by: Senators Plyler, Perdue, Odom

6 **MOST TEXT APPLIES ONLY TO 1996-97**

7 Sec. 29.2. Except for statutory changes or other provisions that clearly indicate
8 an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this
9 act apply only to funds appropriated for, and activities occurring during, the 1996-97
10 fiscal year.

11
12 Requested by: Senators Plyler, Perdue, Odom

13 **1995-96 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

14 Sec. 29.3. (a) Except where expressly repealed or amended by this act, the
15 provisions of Chapters 324 and 507 of the 1995 Session Laws remain in effect.

16 (b) Notwithstanding any modifications by this act in the amounts appropriated,
17 except where expressly repealed or amended, the limitations and directions for the 1995-
18 96 fiscal year in Chapters 324 and 507 of the 1995 Session Laws that applied to
19 appropriations to particular agencies or for particular purposes apply to the newly enacted
20 appropriations and budget reductions of this act for those same particular purposes.

21
22 Requested by: Senators Plyler, Perdue, Odom

23 **EFFECT OF HEADINGS**

24 Sec. 29.4. The headings to the parts and sections of this act are a convenience
25 to the reader and are for reference only. The headings do not expand, limit, or define the
26 text of this act.

27
28 Requested by: Senators Plyler, Perdue, Odom

29 **SEVERABILITY CLAUSE**

30 Sec. 29.5. If any section or provision of this act is declared unconstitutional or
31 invalid by the courts, it does not affect the validity of this act as a whole or any part other
32 than the part so declared to be unconstitutional or invalid.

33
34 Requested by: Senators Plyler, Perdue, Odom

35 **EFFECTIVE DATE**

36 Sec. 29.6. Except as otherwise provided, this act becomes effective July 1,
37 1996.



GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996

H**3**

HOUSE BILL 53
 Senate Appropriations Committee Substitute Adopted 7/16/96
 Third Edition Engrossed 7/16/96

Short Title: Modify 1996-97 Budget.

(Public)

Sponsors:

Referred to: Pensions and Retirement/Insurance/State Personnel.

July 10, 1996

1 A BILL TO BE ENTITLED
 2 AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS
 3 APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL
 4 IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER
 5 CHANGES IN THE BUDGET OPERATION OF THE STATE.
 6 The General Assembly of North Carolina enacts:

7
 8 **PART 1. INTRODUCTION AND TITLE OF ACT**

9
 10 **INTRODUCTION**

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

17
 18 **TITLE OF ACT**



Sec. 1.1. This act shall be known as the Current Operations Appropriations Act of 1996.

PART 2. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/GENERAL FUND

Sec. 2. 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 biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1996-97 fiscal year.

<u>Current Operations - General Fund</u>				<u>1996-97</u>
General Assembly				\$
110,000				
Judicial			Department	
				6,2
41,167				
Office of the Governor				
01. Office of the Governor	(31,388)			
02. Office of State Budget				
and Management	(37,689)			
03. Office of State Planning	(5,000)			
04. Housing Finance Agency	3,500,000			
Department	of	Secretary	of	State
				437
,048				
Department	of	State	Treasurer	
				2,2
00,000				
Department	of	Public	Education	
				103
,121,116				
Department		of	Justice	
				930
,596				



1				
2	Department	of	Administration	
3			(27	
4	0,049)			
5				
6	Department	of	Agriculture	
7			1,0	
8	28,437			
9				
10	Department	of	Labor	
11			419	
12	,183			
13				
14	Department	of	Insurance	
15			1,8	
16	95,364			
17				
18	Department of Environment, Health, and			
19	Natural		Resources	
20			24,	
21	227,428			
22				
23	Office	of	Administrative	Hearings
24				262
25	,754			
26				
27	Department of Human Resources			
28	01. Office of the Secretary	897,466		
29	02. Division of Aging	5,150,231		
30	03. Division of Child Development	9,804,765		
31	04. Division of Services for the			
32	Deaf and Hard of Hearing	(148,984)		
33	05. Division of Social Services	(5,237,841)		
34	06. Division of Medical Assistance	(13,609,703)		
35	07. Division of Services			
36	for the Blind	(36,419)		
37	08. Division of Mental Health,			
38	Developmental Disabilities, and			
39	Substance Abuse Services	(6,968,927)		
40	09. Division of Facility Services	431,977		
41	10. Division of Vocational			
42	Rehabilitation Services	978,310		
43	11. Division of Youth Services	230,288		



GENERAL ASSEMBLY OF NORTH CAROLINA

1996

1 Total Department of Human Resources
2 (8,5

3 08,837)

4
5 Department of Correction
6 (37,

7 798,668)

8
9 Department of Commerce

10 01. Commerce 11,503,334

11 02. MCNC (14,000,000)

12 03. Rural Economic Development
13 Center 2,650,000

14 04. Biotechnology Center 1,000,000

15
16 Department of Revenue
17 1,4

18 70,587

19
20 Department of State Auditor
21 175

22 ,000

23
24 Department of Cultural Resources
25 4,4

26 66,303

27
28 Department of Crime Control
29 and Public Safety
30 382

31 ,378

32
33 Office of the State Controller
34 8,9

35 35,985

36
37 University of North Carolina - Board

38 of Governors

39 01. General Administration 13,000,000

40 02. University Institutional
41 Programs 28,472,013

42 03. Related Educational Programs 3,880,160

43 04. University of North Carolina



1	at Chapel Hill			
2	a. Academic Affairs	(422,425)		
3	b. Health Affairs	(29,424)		
4	05. North Carolina State University			
5	at Raleigh			
6	a. Academic Affairs	(246,316)		
7	06. University of North Carolina at			
8	Greensboro	(114,556)		
9	07. University of North Carolina at			
10	Charlotte	(5,000)		
11	08. University of North Carolina at			
12	Asheville	(4,500)		
13	09. North Carolina Agricultural and			
14	Technical State University	(438,523)		
15	10. Western Carolina University	(91,286)		
16	11. Appalachian State University	(203,487)		
17	12. University of North Carolina at Pembroke	(3,190)		
18	13. Winston-Salem State University	(500)		
19	14. Elizabeth City State			
20	University	(125,503)		
21	15. Fayetteville State University	(9,000)		
22	16. North Carolina Central			
23	University	(67,779)		
24	17. North Carolina School of the			
25	Arts	(317,543)		
26	18. North Carolina School of			
27	Science and Mathematics	(28,036)		
28	19. UNC Hospitals at Chapel Hill	(4,300,000)		
29	Total University of North			
30	Carolina	-	Board	of Governors
31				38,
32	945,105			
33				
34	Department	of	Community	Colleges
35				19,
36	576,317			
37				
38	State	Board	of	Elections
39				175
40	,000			
41				



GENERAL ASSEMBLY OF NORTH CAROLINA

1996

1	Contingency		and	Emergency
2				5,0
3	76,466			
4				
5	Salary		Adjustment	Fund
6				5,0
7	00,000			
8				
9	Reserve	for	Compensation	Increase
10				266
11	,732,066			
12				
13	Reserve	for	Military	Affairs
14				200
15	,000			
16				
17	Reserve	for	Moving	Expenses
18				4,0
19	00,000			
20				
21	Reduction		in	Postage
22				(30
23	0,000)			
24				
25	Retirement		Rate	Adjustment
26				(32
27	5,600)			
28				
29	Criminal	Justice	Information	System
30				500
31	,000			
32				
33	Reserve	for	Structured	Sentencing
34				1,4
35	33,800			
36				
37	GRAND TOTAL CURRENT OPERATIONS –			
38	GENERAL			FUND
39				\$45
40	5,318,203			
41				



GENERAL ASSEMBLY OF NORTH CAROLINA

1996

<u>Capital</u>	<u>Improvements</u>	<u>-</u>	<u>General</u>	<u>Fund</u>
----------------	---------------------	----------	----------------	-------------

6-1997

Department of Administration

Prison Construction

1. Southern Piedmont Area Unit \$ 9,000,000

2. Modular Housing Units 5,000,000

3. Prison Unit Improvements 1,600,000

4. Plan and Design Facilities 4,350,000

Department of Environment, Health,
and Natural Resources

1. Water Resources 8,705,000

2. Museum of Natural Sciences 500,000

University of North Carolina -

Board of

Governors

9,000,000

Department of Crime Control
and Public Safety

1. National Guard Armory 87,567

TOTAL \$ 38,242,567

PART 3. CURRENT OPERATIONS/HIGHWAY FUND

Sec. 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1997, according to the following schedule:

<u>Current Operations/Highway Fund</u>	<u>1996-97</u>
--	----------------

Department of Transportation

01. Administration \$ 960,000

02. Construction and Maintenance 2,206,000

03. Division of Motor Vehicles 1,894,190

04. Reserve for Salary Increases 14,150,000

Department of Public Instruction

1,700,000

1 shall be exempt from coverage under the State Personnel Act and shall serve at the
2 pleasure of the Executive Director. The salaries of the staff shall be set by the Executive
3 Director.

4 (d) The Board may meet in an area provided by the Department of Justice and the
5 Board's staff shall use space provided by the Department."

6 (b) G.S. 143B-426.21(a) is amended by adding a new subdivision to read:

7 "(9) The Chair of the Criminal Justice Information Network Governing
8 Board."

9 (c) The Criminal Justice Information Network Governing Board shall report by
10 April 1, 1997, to the Chairs of the Senate and House Appropriations Committees and the
11 Chairs of the Senate and House Appropriations Subcommittees on Justice and Public
12 Safety on the organization, operations, and expenditures of the Board, including the
13 Board's progress in developing data-sharing standards, the progress in the coordination
14 and cooperation of State and local agencies in establishing standards, and the estimated
15 time of completion of the standards. The Board shall also provide a long-term strategic
16 plan and cost analysis for statewide implementation of the Criminal Justice Information
17 Network as well as a report on the State and local law enforcement agencies'
18 implementation of the mobile data network system, including the amount of funds spent
19 on the system as of the date of the report and the long-term costs of implementing the
20 system statewide.

21 (d) Of the funds appropriated in this act to the reserve for the Criminal Justice
22 Information Network Governing Board, the sum of two hundred thousand dollars
23 (\$200,000) shall be used to support the operation of the Criminal Justice Information
24 Network Governing Board, including staff salaries and benefits and related expenses, and
25 the sum of three hundred thousand dollars (\$300,000) shall be used to fund the
26 development of data standards for the Network. Funds appropriated to the reserve for the
27 Criminal Justice Information Network Governing Board shall not revert.

29 PART 24. DEPARTMENT OF HUMAN RESOURCES

31 Requested by: Senator Martin of Guilford

32 MEDICAID

33 Sec. 24. Section 23.14 of Chapter 324, 1995 Session Laws, reads as rewritten:

34 "Sec. 23.14. (a) Funds appropriated in this act for services provided in accordance
35 with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy
36 and the medically needy. Funds appropriated for these services shall be expended in
37 accordance with the following schedule of services and payment bases. All services and
38 payments are subject to the language at the end of this subsection.

39 Services and payment bases:

- 40 (1) Hospital-Inpatient - Payment for hospital inpatient services will be
41 prescribed in the State Plan as established by the Department of Human
42 Resources. Administrative days for any period of hospitalization shall
43 be limited to a maximum of three days.



- (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.
- (3) Nursing Facilities - Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Human Resources. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program.
- (4) Intermediate Care Facilities for the Mentally Retarded - As prescribed in the State Plan as established by the Department of Human Resources.
- (5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (f) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with the State Plan adopted by the Department of Human Resources consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the Plan adopted by the Department of Human Resources, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per prescription. Adjustments to the professional services fee shall be established by the General Assembly.
- (6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (g) of this section.
- (7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of Human Resources.
- (8) Home Health and Related Services, Private Duty Nursing, Clinic Services, Prepaid Health Plans, Durable Medical Equipment - Payment to be made according to reimbursement plans developed by the Department of Human Resources.
- (9) Medicare Buy-In - Social Security Administration premium.
- (10) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.
- (11) Hearing Aids - Actual cost plus a dispensing fee.
- (12) Rural Health Clinic Services - Provider-based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.



- (13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.
- (14) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of Human Resources.
- (15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.
- (16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of Human Resources.
- (17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the Plan, as approved by the Department of Human Resources.
- (18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to ~~the Children's Special Health Services program~~ qualified providers at rates negotiated by the Department of Human Resources.
- (19) Personal Care Services - Payment in accordance with Plan approved by the Department of Human Resources.
- (20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.
- (21) Hospice - Services may be provided in accordance with Plan developed by the Department of Human Resources.
- (22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a Plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with Plan approved by the Department of Human Resources.
- (24) Health Insurance Premiums - Payments to be made in accordance with the Plan adopted by the Department of Human Resources consistent with federal regulations.
- (25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of Human Resources. Providers



of these services must be certified as meeting program standards of the Department of Environment, Health, and Natural Resources.

- (26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families With Dependent Children Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and the Standard of Need for Aid to Families with Dependent Children shall be as follows:

<u>Categorically Needy</u>			<u>Medically Needy</u>		
Family	Standard	AFDC Payment			
<u>Size</u>	<u>of Need</u>	<u>Level*</u>	<u>AA, AB, AD*</u>		
1	\$ 4,344	\$ 2,172	\$ 2,900		
2	5,664	2,832	3,800		
3	6,528	3,264	4,400		
4	7,128	3,564	4,800 5 7,776 3,888 5,200		
6	8,376	4,185	6,000		
7	8,952	4,476	6,000		
8	9,256	4,680	6,300		

*Aid to Families With Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families With Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.



(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of Human Resources may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

Monthly Net Wages Monthly Incentive Allowance

\$1.00 to \$100.99 Up to \$50.00

\$101.00 - \$200.99 \$80.00

\$201.00 to \$300.99 \$130.00

\$301.00 and greater \$212.00.

(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, 'dispense as written' or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's 'dispense as written' order as noted above.

As used in this subsection 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies,



1 and appliances by implementation of volume purchase plans, single source procurement,
2 or other similar processes in order to improve cost containment.

3 (k) Cost Containment Programs. The Department of Human Resources, Division
4 of Medical Assistance, may undertake cost containment programs including
5 preadmissions to hospitals and prior approval for certain outpatient surgeries before they
6 may be performed in an inpatient setting.

7 (l) For all Medicaid eligibility classifications for which the federal poverty level is
8 used as an income limit for eligibility determination, the income limits will be updated
9 each April 1 immediately following publication of federal poverty guidelines.

10 (m) The Department of Human Resources shall provide Medicaid to 19-, 20-, and
11 21-year olds in accordance with federal rules and regulations.

12 (n) The Department of Human Resources shall provide coverage to pregnant
13 women and to children according to the following schedule:

14 (1) Pregnant women with incomes equal to or less than one hundred eighty-
15 five percent (185%) of the federal poverty guidelines as revised each
16 April 1 shall be covered for Medicaid ~~benefits;~~ benefits.

17 (2) Infants under the age of 1 with family incomes equal to or less than one
18 hundred eighty-five percent (185%) of the federal poverty guidelines as
19 revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.

20 (3) Children aged 1 through 5 with family incomes equal to or less than one
21 hundred thirty-three percent (133%) of the federal poverty guidelines as
22 revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.

23 (4) Children aged 6 through 18 with family incomes equal to or less than
24 the federal poverty guidelines as revised each April 1 shall be covered
25 for Medicaid benefits. ~~Services to pregnant women eligible under this~~
26 ~~section continue throughout the pregnancy but include only those~~
27 ~~related to pregnancy and to those other conditions determined by the~~
28 ~~Department as conditions that may complicate pregnancy. In order to~~
29 ~~reduce county administrative costs and to expedite the provision of~~
30 ~~medical services to pregnant women, to infants, and to children eligible~~
31 ~~under this section, no resources test shall be applied; and~~

32 (5) The Department of Human Resources shall provide Medicaid coverage
33 for adoptive children with special or rehabilitative needs regardless of
34 the adoptive family's income.

35 Services to pregnant women eligible under this subsection continue throughout the
36 pregnancy but include only those related to pregnancy and to those other conditions
37 determined by the Department as conditions that may complicate pregnancy. In order to
38 reduce county administrative costs and to expedite the provision of medical services to
39 pregnant women, to infants, and to children described in subdivisions (3) and (4) of this
40 subsection, no resources test shall be applied.

41 (o) The Department of Human Resources may use Medicaid funds budgeted from
42 program services to support the cost of administrative activities to the extent that these
43 administrative activities produce a net savings in services requirements. Administrative



1 initiatives funded by this section shall be first approved by the Office of State Budget and
2 Management.

3 (p) The Department of Human Resources shall submit a monthly status report on
4 expenditures for acute care and long-term care services to the Fiscal Research Division
5 and to the Office of State Budget and Management. This report shall include an analysis
6 of budgeted versus actual expenditures for eligibles by category and for long-term care
7 beds. In addition, the Department shall revise the program's projected spending for the
8 current fiscal year and the estimated spending for the subsequent fiscal year on a
9 quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal
10 Research Division and to the Office of State Budget and Management no later than the
11 third Thursday of the month.

12 (q) The Division of Medical Assistance, Department of Human Resources, may
13 provide incentives to counties that successfully recover fraudulently spent Medicaid
14 funds by sharing State savings with counties responsible for the recovery of the
15 fraudulently spent funds.

16 (r) If first approved by the Office of State Budget and Management, the Division
17 of Medical Assistance, Department of Human Resources, may use funds that are
18 identified to support the cost of development and acquisition of equipment and software
19 through contractual means to improve and enhance information systems that provide
20 management information and claims processing.

21 (s) The Division of Medical Assistance, Department of Human Resources, may
22 administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation
23 Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5 using temporary
24 rules pending approval of final rules promulgated pursuant to Chapter 150B of the
25 General Statutes.

26 (t) The Department of Human Resources may adopt temporary rules according to
27 the procedures established in G.S. 150B-21.1 when it finds that such rules are necessary
28 to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce
29 fraud and abuse."

30
31 Requested by: Senator Martin of Guilford

32 **NONMEDICAID REIMBURSEMENT CHANGES**

33 Sec. 24.1. Section 23.16 of Chapter 324 of the 1995 Session Laws, as
34 amended by Section 23.5 of Chapter 507, 1995 Session Laws, reads as rewritten:

35 "Providers of medical services under the various State programs, other than Medicaid,
36 offering medical care to citizens of the State shall be reimbursed at rates no more than
37 those under the North Carolina Medical Assistance Program. Hospitals that provide
38 psychiatric inpatient care for Thomas S. class members or adults with mental retardation
39 and mental illness may be paid an additional incentive payment not to exceed fifteen
40 percent (15%) of their regular daily per diem reimbursement.

41 The Department of Human Resources may reimburse hospitals at the full prospective
42 per diem rates without regard to the Medical Assistance Program's annual limits on
43 hospital days. When the Medical Assistance Program's per diem rates for inpatient



services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

<u>Family Size</u>	<u>Medical Eye Care Adults</u>	<u>All Rehabilitation</u>	<u>Other</u>
1	\$ 4,860	\$ 8,364	\$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the ~~Clozaril~~ Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the ~~Clozaril~~ Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of ~~Clozaril~~ atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the ~~Clozaril~~ Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income State Participation Client Participation
(% of poverty)

0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%



1	141-160%	75%	25%
2	161-180%	65%	35%
3	191-180%	65%	35%
4	<u>181-200%</u>	<u>55%</u>	<u>45%</u>
5	201-220%	45%	55%
6	221-240%	35%	65%
7	241-260%	25%	75%
8	261-280%	15%	85%
9	281-300%	5%	95%
10	301%-over	0%	100%.

11
12 The Department of Human Resources shall contract at, or as close as possible to,
13 Medicaid rates for medical services provided to residents of State facilities of the
14 Department."

15
16 Requested by: Senator Martin of Guilford
17 **THOMAS S.**

18 Sec. 24.4. Section 23.21 of Chapter 324 of the 1995 Session Laws reads as
19 rewritten:

20 "Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this
21 act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S.
22 Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty,
23 shall be expended only for programs serving Thomas S. Class members or for services
24 for those clients who are:

- 25 (1) Adults with mental retardation, or who have been treated as if they had
26 mental retardation, who were admitted to a State psychiatric hospital on
27 or after March 22, 1984, and who are included on the Division of
28 Mental Health, Developmental Disabilities, and Substance Abuse
29 Services' official list of prospective Class members;
- 30 (2) Adults with mental retardation who have a documented history of State
31 psychiatric hospital admissions regardless of admission date and who,
32 without funding support, have a good probability of being readmitted to
33 a State psychiatric hospital;
- 34 (3) Adults with mental retardation who have never been admitted to a State
35 psychiatric hospital but who have a documented history of behavior
36 determined to be of danger to self or others that results in referrals for
37 inpatient psychiatric treatment and who, without funding support, have a
38 good probability of being admitted to a State psychiatric hospital; or
- 39 (4) Adults who are included on the Division of Mental Health,
40 Developmental Disabilities, and Substance Abuse Services' official list
41 of prospective Class members and have yet to be confirmed as Class
42 members, who currently reside in the community, and who have a good



1 probability of being admitted to a facility licensed as a 'home for the
2 aged and disabled'.

3 No more than five percent (5%) of the funds appropriated in this act for the Thomas S.
4 program shall be used for clients meeting subdivisions (2), (3), or (4) of this subsection.

5 (b) To ensure that Thomas S. Class members are appropriately served, no State
6 funds shall be expended on placement and services for Thomas S. Class members except:

7 (1) Funds specifically appropriated by the General Assembly for the
8 placement and services of Thomas S. Class members; and

9 (2) Funds for placement and services for which Thomas S. Class members
10 are otherwise eligible.

11 (b1) Thomas S. funds may be expended to support services for Thomas S. Class
12 members in adult care homes when the service needs of individual Class members in
13 these homes cannot be met via the established maximum adult care home rate.

14 (c) The Department of Human Resources shall continue to implement a
15 prospective unit cost reimbursement system and shall ensure that unit cost rates reflect
16 reasonable costs by conducting cost center service type rate comparisons and cost center
17 line item budget reviews as may be necessary.

18 (d) Reporting requirements. The Department of Human Resources shall submit by
19 April 1 of each fiscal year a report to the General Assembly on the progress achieved in
20 serving members and prospective members of the Thomas S. Class. The report shall
21 include the following:

22 (1) The number of Thomas S. clients confirmed as Class members;

23 ~~(2) The number of prospective Class members evaluated;~~

24 ~~(3) The number of prospective Class members awaiting evaluation;~~

25 (3a) The number of individuals identified as prospective Class members;

26 (4) The number of Class members or prospective Class members added in
27 the preceding 12 months due to their admission to a State psychiatric
28 hospital;

29 (5) A description of the types of treatment services provided to Class
30 members; and

31 (6) An analysis of the use of funds appropriated for the Class.

32 (e) Notwithstanding any other provision of law, if the Department of Human
33 Resources determines that a local program is not providing minimally adequate services
34 to members of the Class identified in Thomas S., et al. v. Britt, formerly Thomas S., et al.
35 v. Flaherty, or does not show a willingness to do so, the Department may ensure the
36 provision of these services through contracts with public or private agencies or by direct
37 operation by the Department of these programs."

38
39 Requested by: Senator Martin of Guilford

40 **THOMAS S. FUNDS**

41 Sec. 24.4A. If Thomas S. funds are not sufficient, then notwithstanding G.S.
42 143-16.3 and G.S. 143-23, the Director of the Budget may use funds available to the



1 Department in an amount not to exceed twelve million eight hundred thousand dollars
2 (\$12,800,000).

3
4 Requested by: Senator Martin of Guilford

5 **EXTENSION OF TASK FORCE TO DETERMINE A MINIMUM**
6 **REIMBURSEMENT RATE FOR ADULT DEVELOPMENTAL ACTIVITY**
7 **PROGRAMS (ADAP)**

8 Sec. 24.5. Section 1 of Chapter 481 of the 1995 Session Laws reads as
9 rewritten:

10 "Section 1. The Secretary of the Department of Human Resources shall establish in
11 the Office of the Secretary a special task force to determine a minimum reimbursement
12 rate for Adult Developmental Activity Programs (ADAP). In addition, this task force
13 shall review the current funding stream to ensure that it is the most effective way possible
14 to provide day services to adults with developmental disabilities, including which
15 division within the Department is most appropriate for this program. The task force shall
16 report to the Mental Health Study Commission the results of its study in time for these
17 results to be included in the Mental Health Study Commission's report to the ~~1995~~
18 ~~General Assembly, Regular Session 1996-1997 General Assembly.~~ The task force shall
19 terminate after the presentation of its report to the Commission.

20 At a minimum, the task force shall consist of:

- 21 (1) Two representatives from community rehabilitation programs;
- 22 (2) A representative from the Department of Human Resources;
- 23 (3) A representative from the Division of Mental Health, Developmental
24 Disabilities, and Substance Abuse Services;
- 25 (4) A representative from the Division of Vocational Rehabilitation; and
- 26 (5) A representative from the Association for Retarded Citizens.

27 This task force shall be funded by funds available to the Department."
28

29 Requested by: Senator Martin of Guilford

30 **CONSOLIDATION OF JOHN UMSTEAD HOSPITAL AND THE ADATC-**
31 **BUTNER OPERATING FUND**

32 Sec. 24.6. As the administrative and programmatic functions of John Umstead
33 Hospital and the ADATC-Butner (Alcohol and Drug Abuse Treatment Center at Butner)
34 have been consolidated in an effort to streamline administrative costs, the Division of
35 Mental Health, Developmental Disabilities, and Substance Abuse Services may
36 consolidate the operating budget of these two institutions.
37

38 Requested by: Senator Martin of Guilford

39 **IMPROVEMENT OF OPERATING EFFICIENCIES IN COLLOCATED**
40 **INSTITUTIONS**

41 Sec. 24.7. The Department of Human Resources' colocated institutions shall
42 create operating efficiencies in support functions through increased service coordination
43 across facilities. The Department shall ensure that annual savings in salary and supplies



of at least one hundred thousand dollars (\$100,000) are achieved in the 1996-97 fiscal year and in every fiscal year thereafter. These institutions' managers shall be included in the process and in the determination of the methods for achieving the required savings.

Requested by: Senator Martin of Guilford

**AREA MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND
SUBSTANCE ABUSE SERVICES PROGRAMS
REDUCTIONS/SPECIFICATIONS**

Sec. 24.9. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall ensure that reductions in its State appropriations for the 1996-97 fiscal year that are allocated to area mental health, developmental disabilities, and substance abuse programs are applied by the area authorities only to those services and programs in which additional increased federal TITLE IVA-Emergency Assistance and Medicaid revenues are anticipated.

Requested by: Senator Martin of Guilford

CAROLINA ALTERNATIVES EXPANSION LIMITS

Sec. 24.10. The Department of Human Resources shall move forward with planning, readiness assessments, and other necessary activities to be able to expand the Carolina Alternatives Child and Adult Waiver Pilot Program. Prior to actual implementation of additional covered populations, between January 1997, and July 1997, the Department shall:

- (1) Receive approval from the Health Care Financing Administration;
- (2) Make a determination that each area authority that is going to participate in the pilot has the capacity to implement the waiver; and
- (3) Receive authorization from the Office of State Budget and Management to proceed with the pilot.

Requested by: Senator Martin of Guilford

CLINICAL SOCIAL WORKER EXEMPTION

Sec. 24.10A. Section 8 of Chapter 732 of the 1991 Session Laws reads as rewritten:

"Sec. 8. This act becomes effective January 1, 1992. G.S. 90B-10(b)(3)a. is repealed effective January 1, ~~1997-1999~~. The term of the additional Board position for clinical social worker created by this act shall commence upon the expiration of the term of the public member whose term expires first."

Requested by: Senator Martin of Guilford

FOSTER CARE REPORTING REPEALED

Sec. 24.11. Section 23.22 of Chapter 324 of the 1995 Session Laws is repealed.

Requested by: Senator Martin of Guilford



1 In the event that there is a conflict between the line item budget certified by the
2 Director of the Budget and the budget enacted by the General Assembly, the budget
3 enacted by the General Assembly shall prevail.
4

5 Requested by: Senators Plyler, Perdue, Odom

6 **MOST TEXT APPLIES ONLY TO 1996-97**

7 Sec. 29.2. Except for statutory changes or other provisions that clearly indicate
8 an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this
9 act apply only to funds appropriated for, and activities occurring during, the 1996-97
10 fiscal year.
11

12 Requested by: Senators Plyler, Perdue, Odom

13 **1995-96 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

14 Sec. 29.3. (a) Except where expressly repealed or amended by this act, the
15 provisions of Chapters 324 and 507 of the 1995 Session Laws remain in effect.

16 (b) Notwithstanding any modifications by this act in the amounts appropriated,
17 except where expressly repealed or amended, the limitations and directions for the 1995-
18 96 fiscal year in Chapters 324 and 507 of the 1995 Session Laws that applied to
19 appropriations to particular agencies or for particular purposes apply to the newly enacted
20 appropriations and budget reductions of this act for those same particular purposes.
21

22 Requested by: Senators Plyler, Perdue, Odom

23 **EFFECT OF HEADINGS**

24 Sec. 29.4. The headings to the parts and sections of this act are a convenience
25 to the reader and are for reference only. The headings do not expand, limit, or define the
26 text of this act.
27

28 Requested by: Senators Plyler, Perdue, Odom

29 **SEVERABILITY CLAUSE**

30 Sec. 29.5. If any section or provision of this act is declared unconstitutional or
31 invalid by the courts, it does not affect the validity of this act as a whole or any part other
32 than the part so declared to be unconstitutional or invalid.
33

34 Requested by: Senators Plyler, Perdue, Odom

35 **EFFECTIVE DATE**

36 Sec. 29.6. Except as otherwise provided, this act becomes effective July 1,
37 1996.



GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996

CHAPTER 18
HOUSE BILL 53

AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

PART 1. INTRODUCTION AND TITLE OF ACT

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. 1.1. This act shall be known as the Current Operations Appropriations Act of 1996.

PART 2. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/GENERAL FUND

Sec. 2. 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 biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1996-97 fiscal year.

<u>Current Operations - General Fund</u>	<u>1996-97</u>
General Assembly	\$ (225,000)
Judicial Department	7,895,957
Office of the Governor	



01.	Office of the Governor	(31,388)
02.	Office of State Budget and Management	(37,689)
03.	Office of State Planning	(5,000)
04.	Housing Finance Agency	3,500,000
	Department of Secretary of State	437,048
	Department of State Treasurer	2,200,000
	Department of Public Education	98,021,116
	Department of Justice	1,260,151
	Department of Administration	(270,049)
	Department of Agriculture	972,020
	Department of Labor	419,183
	Department of Insurance	1,895,364
	Department of Environment, Health, and Natural Resources	21,490,126
	Office of Administrative Hearings	262,754
	Department of Human Resources	
01.	Office of the Secretary	795,466
02.	Division of Aging	5,150,231
03.	Division of Child Development	8,804,765
04.	Division of Services for the Deaf and Hard of Hearing	(148,984)
05.	Division of Social Services	(5,462,841)
06.	Division of Medical Assistance	(13,609,703)
07.	Division of Services for the Blind	(36,419)
08.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	(5,596,205)
09.	Division of Facility Services	431,977
10.	Division of Vocational Rehabilitation Services	978,310
11.	Division of Youth Services	184,566



Total Department of Human Resources	(8,508,837)
Department of Correction	(37,214,282)
Department of Commerce	
01. Commerce	11,353,334
02. MCNC	(14,000,000)
03. Rural Economic Development Center	2,700,000
04. Biotechnology Center	1,000,000
Department of Revenue	1,793,876
Department of State Auditor	175,000
Department of Cultural Resources	3,466,303
Department of Crime Control and Public Safety	738,944
Office of the State Controller	8,935,985
University of North Carolina - Board of Governors	
01. General Administration	13,000,000
02. University Institutional Programs	29,904,337
03. Related Educational Programs	3,880,160
04. University of North Carolina at Chapel Hill	
a. Academic Affairs	(422,425)
b. Health Affairs	(29,424)
05. North Carolina State University at Raleigh	
a. Academic Affairs	(246,316)
06. University of North Carolina at Greensboro	(114,556)
07. University of North Carolina at Charlotte	(5,000)
08. University of North Carolina at Asheville	(4,500)
09. North Carolina Agricultural and Technical State University	(438,523)
10. Western Carolina University	(91,286)



11.	Appalachian State University	(203,487)
12.	University of North Carolina at Pembroke	(3,190)
13.	Winston-Salem State University	(500)
14.	Elizabeth City State University	(125,503)
15.	Fayetteville State University	(9,000)
16.	North Carolina Central University	(67,779)
17.	North Carolina School of the Arts	(317,543)
18.	North Carolina School of Science and Mathematics	(28,036)
19.	UNC Hospitals at Chapel Hill	(20,000,000)
Total University of North Carolina - Board of Governors		24,677,429
Department of Community Colleges		20,795,894
State Board of Elections		175,000
Debt Service		(9,000,000)
Salary Adjustment Fund		1,500,000
Reserve for Compensation Increase		267,546,807
Reserve for Military Affairs		200,000
Reduction in Postage		(300,000)
Retirement Rate Adjustment		(325,600)
Criminal Justice Information System		400,000
Reserve for Structured Sentencing		1,433,800
GRAND TOTAL CURRENT OPERATIONS – GENERAL FUND		\$415,328,246

PART 3. CURRENT OPERATIONS/HIGHWAY FUND

Sec. 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes



as enumerated, are made for the biennium ending June 30, 1997, according to the following schedule:

<u>Current Operations/Highway Fund</u>		<u>1996-97</u>
Department of Transportation		
01.	Administration	\$ 960,000
02.	Construction and Maintenance	2,206,000
03.	Division of Motor Vehicles	1,894,190
04.	Reserve for Salary Increases	<u>14,008,494</u>

GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUND \$ 19,068,684

CURRENT OPERATIONS/HIGHWAY FUND - NONRECURRING APPROPRIATIONS

Sec. 3.1. Appropriations are made from the Highway Fund of the 1996-97 fiscal year for use by the Department of Transportation, and for other purposes to provide for one-time expenditures according to the following schedule:

<u>Current Operations/Highway Fund - Nonrecurring</u>		<u>1996-97</u>
Department of Transportation		
01.	Administration	\$ 2,781,145
02.	Construction and maintenance	
	(a) State Maintenance	
	(01) Contract Resurfacing	6,748,423
03.	Division of Motor Vehicles	1,296,716
04.	Reserve for Capital Projects	1,958,126
05.	Reserve for Rail Travel Enhancement	1,700,000
Department of Crime Control and Public Safety		3,288,000
Reserve for Salary Increases		<u>851,906</u>
GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUND - NONRECURRING		\$18,624,316

PART 4. HIGHWAY TRUST FUND

Sec. 4. In addition to the appropriations made by Section 4 of Chapter 324 of the 1995 Session Laws, appropriations from the Highway Trust Fund are made for the 1996-97 fiscal year as follows:

01.	Intrastate System	\$ 8,569,105
02.	Secondary Roads Construction	612,813



repairs and renovations to the Western Justice Academy. The report shall include information on which contractors have been selected, what contracts have been entered into, and the projected and actual cost of the project.

(c) Of the funds allocated in this act to the Office of State Budget and Management from the Repairs and Renovations Fund, up to six million dollars (\$6,000,000) may be used by the Department of Justice to implement this section.

PART 24. DEPARTMENT OF HUMAN RESOURCES

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

MEDICAID

Sec. 24. Section 23.14 of Chapter 324, 1995 Session Laws, reads as rewritten:

"Sec. 23.14. (a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

- (1) Hospital-Inpatient - Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Human Resources. Administrative days for any period of hospitalization shall be limited to a maximum of three days.
- (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.
- (3) Nursing Facilities - Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Human Resources. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program.
- (4) Intermediate Care Facilities for the Mentally Retarded - As prescribed in the State Plan as established by the Department of Human Resources.
- (5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (f) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with the State Plan adopted by the



Department of Human Resources consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the Plan adopted by the Department of Human Resources, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per prescription. Adjustments to the professional services fee shall be established by the General Assembly.

- (6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (g) of this section.
- (7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of Human Resources.
- (8) Home Health and Related Services, Private Duty Nursing, Clinic Services, Prepaid Health Plans, Durable Medical Equipment - Payment to be made according to reimbursement plans developed by the Department of Human Resources.
- (9) Medicare Buy-In - Social Security Administration premium.
- (10) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.
- (11) Hearing Aids - Actual cost plus a dispensing fee.
- (12) Rural Health Clinic Services - Provider-based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.
- (13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.
- (14) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of Human Resources.
- (15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.
- (16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of Human Resources.
- (17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the Plan, as approved by the Department of Human Resources.
- (18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to ~~the Children's Special Health Services program~~ qualified providers at rates negotiated by the Department of Human Resources.
- (19) Personal Care Services - Payment in accordance with Plan approved by the Department of Human Resources.



- (20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.
- (21) Hospice - Services may be provided in accordance with Plan developed by the Department of Human Resources.
- (22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a Plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with Plan approved by the Department of Human Resources.
- (24) Health Insurance Premiums - Payments to be made in accordance with the Plan adopted by the Department of Human Resources consistent with federal regulations.
- (25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of Human Resources. Providers of these services must be certified as meeting program standards of the Department of Environment, Health, and Natural Resources.
- (26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.



(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families With Dependent Children Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and the Standard of Need for Aid to Families with Dependent Children shall be as follows:

<u>Family Size</u>	<u>Categorically Needy</u>	<u>Medically Needy</u>	
	<u>Standard of Need</u>	<u>AFDC Payment Level*</u>	<u>AA, AB, AD*</u>
1	\$ 4,344	\$ 2,172	\$ 2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Aid to Families With Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families With Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of Human Resources may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

<u>Monthly Net Wages</u>	<u>Monthly Incentive Allowance</u>
\$1.00 to \$100.99	Up to \$50.00
\$101.00 - \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00.

(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.



(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, 'dispense as written' or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's 'dispense as written' order as noted above.

As used in this subsection 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other similar processes in order to improve cost containment.

(k) Cost Containment Programs. The Department of Human Resources, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(l) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(m) The Department of Human Resources shall provide Medicaid to 19-, 20-, and 21-year olds in accordance with federal rules and regulations.

(n) The Department of Human Resources shall provide coverage to pregnant women and to children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.
- (2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.



- (3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits; benefits.~~
- (4) Children aged 6 through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. ~~Services to pregnant women eligible under this section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children eligible under this section, no resources test shall be applied; and~~
- (5) The Department of Human Resources shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

(o) The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative initiatives funded by this section shall be first approved by the Office of State Budget and Management.

(p) The Department of Human Resources shall submit a monthly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month.

(q) The Division of Medical Assistance, Department of Human Resources, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(r) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Human Resources, may use funds that are identified to support the cost of development and acquisition of equipment and software



through contractual means to improve and enhance information systems that provide management information and claims processing.

(s) The Division of Medical Assistance, Department of Human Resources, may administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5 using temporary rules pending approval of final rules promulgated pursuant to Chapter 150B of the General Statutes.

(t) The Department of Human Resources may adopt temporary rules according to the procedures established in G.S. 150B-21.1 when it finds that such rules are necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

NONMEDICAID REIMBURSEMENT CHANGES

Sec. 24.1. Section 23.16 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.5 of Chapter 507, 1995 Session Laws, reads as rewritten:

"Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program. Hospitals that provide psychiatric inpatient care for Thomas S. class members or adults with mental retardation and mental illness may be paid an additional incentive payment not to exceed fifteen percent (15%) of their regular daily per diem reimbursement.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

<u>Family Size</u>	<u>Medical Eye Care Adults</u>	<u>All Rehabilitation</u>	<u>Other</u>
1	\$ 4,860	\$ 8,364	\$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400



4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the ~~Clozaril~~-Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the ~~Clozaril~~-Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of ~~Clozaril~~-atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the ~~Clozaril~~-Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

<u>Income</u> (% of poverty)	<u>State Participation</u>	<u>Client Participation</u>
0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%
141-160%	75%	25%
161-180%	65%	35%
191-180%	65%	35%
<u>181-200%</u>	<u>55%</u>	<u>45%</u>
201-220%	45%	55%
221-240%	35%	65%
241-260%	25%	75%
261-280%	15%	85%
281-300%	5%	95%
301%-over	0%	100%.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."

Requested by: Representatives Gardner, Nye, Russell, Senators Martin of Guilford, Lucas

MEDICAID SUBROGATION CHANGE/LRC STUDY

Sec. 24.2. (a) G.S. 108A-57 reads as rewritten:

"§ 108A-57. Subrogation rights; withholding of information a misdemeanor.



(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of ~~such this~~ assistance, or of ~~his the~~ beneficiary's personal representative, his heirs, or the administrator or executor of ~~his the~~ estate, against any person. ~~It shall be the responsibility of the~~ The county attorney ~~attorney~~, or an attorney retained by the county ~~and/or or~~ the State ~~or both~~, or an attorney retained by the beneficiary of the assistance if ~~such this~~ attorney has actual notice of payments made under this Part ~~to shall~~ enforce this section, and ~~said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department; provided, however, that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death:~~ section. Any attorney retained by the beneficiary of the assistance shall, out of the proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered.

- (1) ~~First to the payment of any court costs taxed by the judgment;~~
- (2) ~~Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;~~
- (3) ~~Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one third of the amount obtained or recovered to which the right of subrogation applies; and~~
- (4) ~~Fourth to the payment of any amount remaining to the beneficiary or his personal representative.~~

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) ~~It shall be~~ is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."



(b) The Legislative Research Commission may study issues relating to the Medicaid subrogation statute, G.S. 108A-57, including State compliance with federal law as it relates to recovery of Medicaid expenditures, the appropriate amount of attorneys' fees and costs, if any, the State should pay for recovery of Medicaid expenditures, and the appropriate amount, if any, that should be guaranteed to the client for whom the underlying action is brought.

(c) The Legislative Research Commission may report the results of its study, along with any legislative proposals and costs analyses, to the 1997 General Assembly.

(d) This section becomes effective as of the effective date of this act and applies to claims filed on or after August 15, 1995.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
THOMAS S.

Sec. 24.4. Section 23.21 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

- (1) Adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a State psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members;
- (2) Adults with mental retardation who have a documented history of State psychiatric hospital admissions regardless of admission date and who, without funding support, have a good probability of being readmitted to a State psychiatric hospital;
- (3) Adults with mental retardation who have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment and who, without funding support, have a good probability of being admitted to a State psychiatric hospital; or
- (4) Adults who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members and have yet to be confirmed as Class members, who currently reside in the community, and who have a good probability of being admitted to a facility licensed as a 'home for the aged and disabled'.

No more than five percent (5%) of the funds appropriated in this act for the Thomas S. program shall be used for clients meeting subdivisions (2), (3), or (4) of this subsection.



(b) To ensure that Thomas S. Class members are appropriately served, no State funds shall be expended on placement and services for Thomas S. Class members except:

- (1) Funds specifically appropriated by the General Assembly for the placement and services of Thomas S. Class members; and
- (2) Funds for placement and services for which Thomas S. Class members are otherwise eligible.

(b1) Thomas S. funds may be expended to support services for Thomas S. Class members in adult care homes when the service needs of individual Class members in these homes cannot be met via the established maximum adult care home rate.

(c) The Department of Human Resources shall continue to implement a prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary.

(d) Reporting requirements. The Department of Human Resources shall submit by April 1 of each fiscal year a report to the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. The report shall include the following:

- (1) The number of Thomas S. clients confirmed as Class members;
- (2) ~~The number of prospective Class members evaluated;~~
- (3) ~~The number of prospective Class members awaiting evaluation;~~
- (3a) The number of individuals identified as prospective Class members;
- (4) The number of Class members or prospective Class members added in the preceding 12 months due to their admission to a State psychiatric hospital;
- (5) A description of the types of treatment services provided to Class members; and
- (6) An analysis of the use of funds appropriated for the Class.

(e) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing minimally adequate services to members of the Class identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, or does not show a willingness to do so, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of these programs."

Requested by: Representatives Holmes, Creech, Esposito, Senator Martin of Guilford
THOMAS S. FUNDS

Sec. 24.4A. If Thomas S. funds are not sufficient, then notwithstanding G.S. 143-16.3 and G.S. 143-23, the Director of the Budget may use funds available to the Department in an amount not to exceed twelve million eight hundred thousand dollars (\$12,800,000).

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas



EXTENSION OF TASK FORCE TO DETERMINE A MINIMUM REIMBURSEMENT RATE FOR ADULT DEVELOPMENTAL ACTIVITY PROGRAMS (ADAP)

Sec. 24.5. Section 1 of Chapter 481 of the 1995 Session Laws reads as rewritten:

"Section 1. The Secretary of the Department of Human Resources shall establish in the Office of the Secretary a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs (ADAP). In addition, this task force shall review the current funding stream to ensure that it is the most effective way possible to provide day services to adults with developmental disabilities, including which division within the Department is most appropriate for this program. The task force shall report to the ~~Mental Health Study Commission~~ Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the results of its study in time for these results to be included in the Commission's report to the ~~1995 General Assembly, Regular Session 1996-1997 General Assembly.~~ The task force shall terminate after the presentation of its report to the Commission.

At a minimum, the task force shall consist of:

- (1) Two representatives from community rehabilitation programs;
- (2) A representative from the Department of Human Resources;
- (3) A representative from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (4) A representative from the Division of Vocational Rehabilitation; and
- (5) A representative from the Association for Retarded Citizens.

This task force shall be funded by funds available to the Department."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
CONSOLIDATION OF JOHN UMSTEAD HOSPITAL AND THE ADATC-BUTNER OPERATING FUND

Sec. 24.6. As the administrative and programmatic functions of John Umstead Hospital and the ADATC-Butner (Alcohol and Drug Abuse Treatment Center at Butner) have been consolidated in an effort to streamline administrative costs, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services may consolidate the operating budget of these two institutions.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
IMPROVEMENT OF OPERATING EFFICIENCIES IN COLLOCATED INSTITUTIONS

Sec. 24.7. The Department of Human Resources' colocated institutions shall create operating efficiencies in support functions through increased service coordination across facilities. The Department shall ensure that annual savings in salary and supplies of at least one hundred thousand dollars (\$100,000) are achieved in the 1996-97 fiscal year and in every fiscal year thereafter. These institutions' managers shall be included



Sec. 29.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SEVERABILITY CLAUSE

Sec. 29.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

EFFECTIVE DATE

Sec. 29.6. Except as otherwise provided, this act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives




[<< Previous: H52](#)

House Bill 53 / S.L. 1996-18es2

1996-97 BUDGET CHANGES-2

Text	Fiscal Note
Edition 1 [HTML]	-
Edition 2 [HTML]	-
Edition 3 [HTML]	-
SL 1996-18es2 [HTML]	-

Status:	RATIFIED CH.0018 on 08/03/1996
Sponsors	
Primary:	George Holmes;
Co:	Cary Allred; Billy Creech; Theresa Es Joanne Sharpe; Cynthia Watson;
Attributes:	Public; Affects Appropriations; Text has

History 		
Date	Chamber	Action
07/10/1996	House	Referred to Committee on Rules, Calendar, and Operations of the House
07/10/1996	House	WITHDRAWN FROM COMM
07/10/1996	House	Re-referred to Committee on Appropriations
07/10/1996	House	REPTD FAV
07/10/1996	House	CAL PURSUANT RULE 36(A)
07/10/1996	House	PLACED ON CAL FOR 07-10
07/10/1996	House	PASSED 2ND & 3RD READING
07/11/1996	Senate	REC FROM HOUSE
07/11/1996	Senate	Referred to Committee on Appropriations
07/16/1996	Senate	REPTD FAV COM SUBSTITUTE
07/16/1996	Senate	COM SUBSTITUTE ADOPTED
07/16/1996	Senate	Re-referred to Committee on Pensions & Retirement and Insurance
07/16/1996	Senate	REPTD FAV
07/16/1996	Senate	Re-referred to Committee on Finance
07/16/1996	Senate	REPTD FAV
07/16/1996	Senate	AMENDMENT WITHDRAWN #1
07/16/1996	Senate	AMEND ADOPTED #3,4,5,6&7
07/16/1996	Senate	AMEND RECON #3
07/16/1996	Senate	AMEND FAILED #3
07/16/1996	Senate	AMEND ADOPTED #2
07/16/1996	Senate	AMEND RECON #6
07/16/1996	Senate	AMEND FAILED #6
07/16/1996	Senate	PASSED 2ND & 3RD READING
07/17/1996	House	REC TO CONCUR S COM SUB
07/17/1996	House	Referred to Committee on Rules, Calendar, and Operations of the House
07/23/1996	House	WITHDRAWN FROM COMM
07/23/1996	House	PLACED ON CAL FOR 07-23
07/23/1996	House	FAILED CONCUR IN COM SUB
07/23/1996	House	CONF COM APPOINTED
07/23/1996	Senate	CONF COM APPOINTED
08/03/1996	House	CONF COM REPORTED



08/03/1996	House	CONF REPORT ADOPTED
08/03/1996	Senate	CONF COM REPORTED
08/03/1996	Senate	CONF REPORT ADOPTED
08/03/1996	House	RATIFIED CH.0018

Note: a bill listed on this website is not law until passed by the House and the Senate, ratified, and, if required, signed by t

1996 2nd Special Session

Bill Number: enter bill # (i.e., S

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1996]

HOUSE JOURNAL

July 10, 1996

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BUSINESS DEVELOPMENT IN THE ZONES, is referred to the Committee on Rules, Calendar, and Operations of the House.

By Representatives Holmes, Creech, Esposito, Justus, Morgan, Rayfield, Thompson, and Watson:

H.B. 52, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, is referred to the Committee on Rules, Calendar, and Operations of the House.

By Representatives Holmes, Allred, Creech, Esposito, Justus, Morgan, Rayfield, Sharpe, and Watson:

H.B. 53, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, is referred to the Committee on Rules, Calendar, and Operations of the House.

By Representative Morgan:

H.B. 54, A BILL TO BE ENTITLED AN ACT TO MAKE TAX LAW CHANGES AUTHORIZED FOR CONSIDERATION DURING THE SECOND EXTRA SESSION OF THE GENERAL ASSEMBLY, is referred to the Committee on Rules, Calendar, and Operations of the House.

CALENDAR

Action is taken on the following:

Committee Substitute for **H.B. 18**, A BILL TO BE ENTITLED AN ACT TO PHASE OUT THE STATE SALES TAX ON FOOD OVER FOUR YEARS, PHASE DOWN THE CORPORATE INCOME TAX OVER FOUR YEARS, ALLOW INCOME AND FRANCHISE TAX CREDITS FOR INVESTMENTS IN BUSINESS PROPERTY AND FOR RESEARCH AND DEVELOPMENT, PHASE OUT THE SOFT DRINK TAX OVER THREE YEARS, REDUCE THE SALES TAX RATE ON ELECTRICITY AND NATURAL GAS USED IN FARMING AND MANUFACTURING, MODIFY THE SALES TAX TREATMENT OF BUNDLED TRANSACTIONS AND FREE ITEMS GIVEN AWAY BY MERCHANTS,

RE-REFERRALS

On motion of Representative Morgan, the following bills are withdrawn from the Committee on Rules, Calendar, and Operations of the House and re-referred to the Committee on Finance.

H.B. 30, A BILL TO BE ENTITLED AN ACT TO PROVIDE FEDERAL RETIREES A REFUNDABLE TAX CREDIT, WITHOUT INTEREST, FOR STATE INCOME TAX PAID ON THEIR RETIREMENT BENEFITS FOR TAX YEARS 1985 THROUGH 1988;

H.B. 17, A BILL TO BE ENTITLED AN ACT TO CORRECT, SET OUT, AND CLARIFY THE BOUNDARIES OF THE TOWN OF DANBURY AND TO VALIDATE ACTIONS OF THE TOWN;

H.B. 19, A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF CASTLE HAYNE, SUBJECT TO A REFERENDUM;

H.B. 20, A BILL TO BE ENTITLED AN ACT TO REACTIVATE THE CHARTER OF THE TOWN OF WILSON'S MILLS IN JOHNSTON COUNTY;

H.B. 34, A BILL TO BE ENTITLED AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF SPRUCE PINE, AND TO EXEMPT THE PROPERTY FROM THE CEILING OF SATELLITE ANNEXATIONS BY THE TOWN; and

H.B. 36, A BILL TO BE ENTITLED AN ACT TO ENABLE THE COUNTY OF LINCOLN AND THE CITY OF LINCOLNTON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

On motion of Representative Morgan, the following bills are withdrawn from the Committee on Rules, Calendar, and Operations of the House and re-referred to the Committee on Appropriations.

H.B. 52, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE; and

→ **H.B. 53,** A BILL TO BE ENTITLED AN ACT TO AMEND THE

BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES.

MESSAGES FROM THE SENATE

The following are received from the Senate:

S.B. 2, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CRAVEN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY TAX AND TO REVISE THE EXISTING CRAVEN COUNTY ROOM OCCUPANCY TAX, is read the first time and referred to the Committee on Rules, Calendar, and Operations of the House.

S.B. 3, A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF PELETIER, is read the first time and referred to the Committee on Rules, Calendar, and Operations of the House.

On motion of the Chair, the House recesses at 11:52 a.m.

RECESS

The House reconvenes pursuant to recess and is called to order by the Speaker.

REPORTS OF STANDING COMMITTEE AND PERMANENT SUBCOMMITTEES

The following reports from standing committee are presented:

By Representatives Holmes, Esposito, and Creech, Co-Chairs, for the Committee on Appropriations:

H.B. 52, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, with a favorable report.

Pursuant to **H.R. 1**, the bill is placed on today's Calendar.

→ **H.B. 53,** A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION



COMMISSION MAY CHARGE FOR PERMITS AND COMPLIANCE MONITORING UNDER THE WATER QUALITY PROGRAM AND TO INCREASE THE MAXIMUM PERCENTAGE OF THE TOTAL BUDGETS OF CERTAIN ENVIRONMENTAL PROGRAMS THAT MAY BE DERIVED FROM FEES FROM THIRTY TO FIFTY PERCENT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, is referred to the Committee on Rules, Calendar, and Operations of the House.

By Representative Wilkins:

H.B. 77, A BILL TO BE ENTITLED AN ACT PERTAINING TO CONGRESSIONAL REDISTRICTING, is referred to the Committee on Rules, Calendar, and Operations of the House.

By Representative Morgan:

H.B. 78, A BILL TO BE ENTITLED AN ACT TO ENACT THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 1996, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, is referred to the Committee on Rules, Calendar, and Operations of the House.

CALENDAR (continued)

H.B. 53, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, passes its second reading, by electronic vote (103-7), and there being no objection is read a third time.

Representative R. Hunter requests and is granted permission to be recorded as voting "aye". The adjusted vote total is (104-6).

The bill passes its third reading, by electronic vote (106-4), and is ordered sent to the Senate by Special Message.

H.B. 52, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.

The Speaker states that all amendments that do not state exactly where

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Representative Morgan for the Committee on Rules, Calendar, and Operations of the House, reports the Journal of July 16 has been examined and found correct. Upon his motion, the Journal is approved as written by electronic vote (101-0).

Leaves of absence are granted Representatives McMahan, K. Miller, G. Robinson, and Tallent for today.

REPORT OF STANDING COMMITTEE AND PERMANENT SUBCOMMITTEE

The following report from standing committee is presented:


By Representatives Gray, Arnold, and C. Wilson, Co-Chairs, for the Committee on Finance.

H.B. 63, A BILL TO BE ENTITLED AN ACT TO REVIVE THE CHARTER OF THE TOWN OF WENTWORTH, SUBJECT TO A REFERENDUM, with a favorable report.

Pursuant to Rule 36(a), the bill is placed on the Calendar for July 18.

MESSAGE FROM THE SENATE

The following is received from the Senate:



H.B. 53, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, is returned for concurrence in Senate committee substitute and referred to the Committee on Rules, Calendar, and Operations of the House.

Upon concurrence, the Senate committee substitute changes the title.

CALENDAR

Action is taken on the following:


H.B. 17, A BILL TO BE ENTITLED AN ACT TO CORRECT, SET OUT, AND CLARIFY THE BOUNDARIES OF THE TOWN OF DANBURY AND TO VALIDATE ACTIONS OF THE TOWN, passes its third reading, by the following vote.

suspended in order that he might file a House resolution amending the House rules.

Representative Daughtry calls the previous question on the motion and the call is sustained by electronic vote (61-45).

The motion to suspend the rules fails, by electronic vote (60-46), for lack of a two-thirds majority.

RE-REFERRAL



On motion of Representative Morgan and without objection, Senate Committee Substitute for **H.B. 53**, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, is withdrawn from the Committee on Rules, Calendar, and Operations of the House and placed on the Calendar for immediate consideration.

Representative Holmes moves that the House do not concur in the Senate committee substitute and requests conferees.

Representative Daughtry calls the previous question on the motion and the call is sustained by electronic vote (62-43).

The House does not concur in the Senate committee substitute by electronic vote (62-44).

The Speaker appoints Representatives Holmes, Esposito, and Creech, Co-Chairs; Daughtry, Russell, Bowie, Grady, Preston, Weatherly, Mitchell, Thompson, Justus, Gardner, Lemmond, Ives, Nye, Crawford, Cummings, Kiser, Morgan, Arnold, C. Wilson, and Gray as conferees on the part of the House and the Senate is so notified by Special Message.

CONFEREES APPOINTED

The Speaker appoints Representatives Arnold, Gray, and C. Wilson as additional conferees on Senate Committee Substitute for **H.B. 52**, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, and the Senate is so notified by Special Message.



SPECIAL MESSAGE FROM THE SENATE

SECOND EXTRAORDINARY SESSION 1996
1995 GENERAL ASSEMBLY

SENATE CHAMBER

July 23, 1996

Mr. Speaker:

Pursuant to your message received Tuesday, July 23, 1996, that the House of Representatives fails to concur in the Senate Committee Substitute bill to **H.B. 53**, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read **H.B. 53** (Senate Committee Substitute), A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, and requests conferees, the President Pro Tempore appoints:

Senator Plyler, Chairman

Senator Perdue

Senator Odom

Senator Sherron

Senator Kerr

Senator Conder

Senator Rand

Senator Ballance

Senator Gulley

Senator Lucas

Senator Hartsell

Senator Martin of Guilford

Senator Martin of Pitt

Senator Plexico

Senator Winner

Senator Hoyle

Senator Warren

Senator Cooper

Senator Jordan

Senator Little

on the part of the Senate to confer with the committee appointed by your Honorable Body to the end that the differences arising may be resolved.

Respectfully,
S/ Sylvia M. Fink
Principal Clerk

McLaughlin, G. Robinson, Tallent, and C. Wilson for today.

ENROLLED BILLS

The following are properly enrolled, duly ratified, and sent to the office of the Secretary of State:

H.B. 61, AN ACT TO APPOINT PERSONS TO PUBLIC OFFICE UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES. (CHAPTER 15)

S.B. 9, AN ACT TO AUTHORIZE THE PENDER COUNTY BOARD OF EDUCATION TO CONVEY CERTAIN PROPERTY AT PRIVATE SALE TO THE MAPLE HILL CIVIC CLUB, INC., A NONPROFIT CORPORATION. (CHAPTER 16)

S.B. 46, AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO ABOLISH THE HEALTH CARE REFORM COMMISSION, AND TO AMEND THE LAWS GOVERNING CORPORATE REINSTATEMENT AFTER DISSOLUTION. (CHAPTER 17)

CONFERENCE REPORT

Representative Holmes sends forth the Conference Report on Senate Committee Substitute for **H.B. 53**, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE. Pursuant to **H.R. 1**, the Conference Report is placed on today's Calendar for immediate consideration.

Representative Holmes moves the adoption of the following Conference Report.

Senate Committee Substitute for H.B. 53

To: THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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1995 GENERAL ASSEMBLY

SENATE CHAMBER
August 3, 1996

Mr. Speaker:

On **H.B. 53**, A BILL TO BE ENTITLED AN ACT TO AMEND THE BUDGET AND TO APPROPRIATE FUNDS FOR PUBLIC EDUCATION AND FOR SALARY INCREASES FOR TEACHERS AND STATE EMPLOYEES, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read **H.B. 53** (Senate Committee Substitute), A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, it is ordered that a message be sent to the House of Representatives with the information that the Senate adopts the report of the conferees to the end that when a similar action has been taken on the part of your Honorable Body, the Speaker may order the bill enrolled.

Respectfully,
S/ Sylvia M. Fink
Principal Clerk

The Speaker orders the bill enrolled.

CALENDAR (continued)

Committee Substitute for **H.J.R. 46**, A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 1996 SECOND EXTRA SESSION.

Representative Morgan offers Amendment No. 1 which is adopted by electronic vote (101-0).

The resolution, as amended, passes its second reading, by electronic vote (100-0), and there being no objection is read a third time.

The resolution, as amended, passes its third reading and is ordered sent to the Senate without engrossment by Special Message.

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ENROLLED BILLS

The following are properly enrolled, duly ratified, and sent to the office of the Secretary of State:

 **H.B. 53, AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE. (CHAPTER 18)**

H.B. 30, AN ACT TO REFUND TO FEDERAL RETIREES THE UNCONSTITUTIONAL TAXES THEY PAID ON THEIR PENSIONS FOR TAX YEARS 1985 THROUGH 1988. (CHAPTER 19)

S.B. 2, AN ACT TO AUTHORIZE CRAVEN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY TAX AND TO REVISE THE EXISTING CRAVEN COUNTY ROOM OCCUPANCY TAX. (CHAPTER 20)

H.J.R. 46, A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 1996 SECOND EXTRA SESSION. (RESOLUTION 1)

Representative Morgan moves, seconded by Representative Watson, that the 1995 House of Representatives meeting in Second Extra Session under call of the Governor, adjourn sine die. The motion carries.

The Speaker orders a Special Message sent to the Senate informing that Honorable Body that the House has concluded its business and stands ready to adjourn sine die.

SPECIAL MESSAGE FROM THE SENATE**SECOND EXTRAORDINARY SESSION 1996
1995 GENERAL ASSEMBLY**

SENATE CHAMBER
August 3, 1996

Mr. Speaker:

LEGISLATIVE INTENT SERVICE, INC. (530) 656-1917



MINUTES

SENATE COMMITTEE ON PENSIONS & RETIREMENT/INSURANCE/
STATE PERSONNEL

July 16, 1996

The Senate Committee on Pensions & Retirement/Insurance/State Personnel met at 11:00 a.m. on Tuesday, July 16, 1996, at Senator Soles' desk in the Senate Chamber during a recess of the session. Fourteen members of the Committee were present.

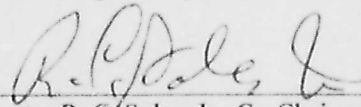
The purpose of the meeting was to discuss special provisions relating to the State Retirement System in SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 53, AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.


Mr. Stanley Moore, Fiscal Analyst, explained the first provision. The bill provides effective October 1, 1996, for post-retirement increases of (1) 4.4 percent in allowances of retirees and other beneficiaries who commenced retirement on and before July 1, 1995 and (2) a prorated portion of 4.4 percent in the allowances of retirees and other beneficiaries who commenced retirement from August 1, 1995 through July 1, 1996, based on the ratio of the number of months of retirement to the total of months in the eligibility period. (Copy of Actuarial Note attached.) This provision was approved upon motion of Senator Plyler.

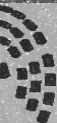
The second provision related to a change in the Mecklenburg Law Officers' Emergency and Pension Fund. It increases the death benefit payable from the Emergency and Pension Fund of the county for any law enforcement officer who is killed while in the performance of duty from a maximum of \$500 to any amount up to a maximum of \$10,000. The bill also allows the board to use funds in the Emergency and Pension Fund to provide scholarships to dependent children of officers who are either killed or become totally disabled while in the performance of their duty. The Special Provision also repeals the disability benefit of \$75 per month. (Copy of Actuarial Note attached.) This provisions was approved upon motion of Senator Conder.

Senator Plyler moved that the Senate Committee Substitute for House Bill 53 be given a favorable report. Motion carried.

The meeting was adjourned at 11:15 a.m.


Senator R. C. Soles, Jr., Co-Chairman


Joan R. Leatherman, Committee Clerk



MINUTES

SENATE COMMITTEE ON PENSIONS & RETIREMENT/INSURANCE/
STATE PERSONNEL

July 16, 1996

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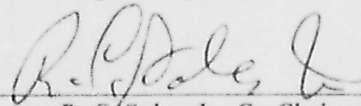
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Senator Plyler moved that the Senate Committee Substitute for House Bill 53 be given a favorable report. Motion carried.

The meeting was adjourned at 11:15 a.m.


Senator R. C. Soles, Jr., Co-Chairman


Joan R. Leatherman, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

PENSIONS & RETIREMENT/INSURANCE/STATE PERSONNEL COMMITTEE REPORT

R. C. Soles, Jr., Co-Chair
J. Richard Conder, Co-Chair

Tuesday, July 16, 1996

R. C. SOLES, JR.,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS) **53** Modify 1996-97 Budget
 Sequential Referral: Finance

TOTAL REPORTED: 1

Committee Clerk Comment:



SENATE
COMMITTEE SUBSTITUTE
GENERAL ASSEMBLY OF NORTH CAROLINA

SECOND EXTRA SESSION 1996

JUL 16 1996

H

ADOPTED^D

HOUSE BILL 53
Proposed Senate Committee Substitute H53ES2-PCS4291

Short Title: Modify 1996-97 Budget.

(Public)

Sponsors:

Referred to:

July 10, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS
3 APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL
4 IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE
5 OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.
6 The General Assembly of North Carolina enacts:

7
8 **PART 1. INTRODUCTION AND TITLE OF ACT**

9
10 **INTRODUCTION**

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

17
18 **TITLE OF ACT**

19 Sec. 1.1. This act shall be known as the Current Operations
20 Appropriations Act of 1996.

21
22 **PART 2. GENERAL FUND APPROPRIATIONS**

23
24 **CURRENT OPERATIONS/GENERAL FUND**

25 Sec. 2. Appropriations from the General Fund of the State for the
26 maintenance of the State departments, institutions, and agencies, and for other
27 purposes as enumerated are made for the biennium ending June 30, 1997, according



1	181-200%	55%	45%
2	201-220%	45%	55%
3	221-240%	35%	65%
4	241-260%	25%	75%
5	261-280%	15%	85%
6	281-300%	5%	95%
7	301%-over	0%	100%.

8
9 The Department of Human Resources shall contract at, or as close as possible to,
10 Medicaid rates for medical services provided to residents of State facilities of the
11 Department."

12
13 Requested by: Senator Martin of Guilford

14 **MEDICAID SUBROGATION CHANGE**

15 Sec. 24.1A. (a) G.S. 108A-57 reads as rewritten:

16 "**§ 108A-57. Subrogation rights; withholding of information a misdemeanor.**

17 (a) Notwithstanding any other provisions of the law, to the extent of payments
18 under this Part, the State, or the county providing medical assistance benefits, shall be
19 subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of
20 such this assistance, or of his the beneficiary's personal representative, his heirs, or
21 the administrator or executor of his the estate, against any person. It shall be the
22 responsibility of the The county attorney attorney, or an attorney retained by the
23 county and/or or the State or both, or an attorney retained by the beneficiary of the
24 assistance if such this attorney has actual notice of payments made under this Part to
25 shall enforce this section, and said section. An attorney retained by the county or the
26 State or both shall be compensated for his services in accordance with the attorneys'
27 fee arrangements approved by the Department, provided, however, that any
28 Department. Any attorney retained by the beneficiary of the assistance shall be
29 compensated for his services distribute proceeds obtained on behalf of the beneficiary
30 by settlement with, judgment against, or otherwise from a third party by reason of the
31 injury or death in accordance with the following schedule and in the following order
32 of priority from any amount obtained on behalf of the beneficiary by settlement with,
33 judgment against, or otherwise from a third party by reason of such injury or death:
34 priority;

- 35 (1) First to the payment of any court costs taxed by the judgment;
- 36 (2) Second to the payment of the fee of the attorney representing the
37 beneficiary making the settlement or obtaining the judgment, but
38 this fee shall not exceed one-third of the gross amount obtained or
39 recovered to which the right of subrogation applies; recovered;
- 40 (3) Third to the payment to the Department of the amount of
41 assistance received by the beneficiary as prorated with other claims
42 against the amount obtained or received from the third party to
43 which the right of subrogation applies, but the amount shall not
44 exceed one third of the amount obtained or recovered to which the
45 right of subrogation applies; beneficiary; and
- 46 (4) Fourth to the payment of any amount remaining to the beneficiary
47 or his the beneficiary's personal representative.

48 The United States and the State of North Carolina shall be is entitled to shares in
49 each net recovery under this section. Their shares shall be promptly paid under this
50 section and their proportionate parts of such the sum shall be determined in
51 accordance with the matching formulas in use during the period for which assistance
52 was paid to the recipient.

(b) It ~~shall be~~ is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

(b) This section becomes effective October 1, 1996.

Requested by: Senator Martin of Guilford

VOCATIONAL REHABILITATION SUBROGATION CHANGE

Sec. 24.1B. (a) G.S. 143-547 reads as rewritten:

"§ 143-547. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of law, to the extent of payments under this Article, the State Vocational Rehabilitation program shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of the assistance, or ~~his~~ the beneficiary's personal representative, ~~his~~ heirs, or the administrator or executor of ~~his~~ the estate, against any person; provided, however, that any person. Any attorney retained by the beneficiary of the assistance shall be compensated for ~~his~~ services distribute proceeds obtained on behalf of the beneficiary by settlement with judgment against, or otherwise from a third party by reason of injury or death in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with judgment against, or otherwise from a third party by reason of such injury or death: priority:

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the gross amount obtained or recovered to which the right of subrogation applies; recovered;
- (3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to for which the a right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; recovered; and
- (4) Fourth to the payment of any amount remaining to the beneficiary or ~~his~~ the beneficiary's personal representative.

The United States and the State of North Carolina shall be is entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of ~~with~~ the sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) In furnishing a person rehabilitation services, including medical case services under this Chapter, the Division of Vocational Rehabilitation Services is subrogated to the person's right of recovery from:

- (1) Personal insurance;
- (2) Worker's Compensation;
- (3) Any other person or personal injury caused by the other person's negligence or wrongdoing; or
- (4) Any other source.

(c) The Division of Vocational Rehabilitation Services' right to subrogation is limited to the cost of the rehabilitation services provided by or through the Division for which a financial needs test is a condition of the service provisions. Those services that are provided without a financial needs test are excluded from these subrogation rights.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

PENSIONS & RETIREMENT/INSURANCE/STATE PERSONNEL COMMITTEE REPORT

R. C. Soles, Jr., Co-Chair
J. Richard Conder, Co-Chair

Tuesday, July 16, 1996

R. C. SOLES, JR.,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)	53	Modify 1996-97 Budget	
		Sequential Referral:	Finance

TOTAL REPORTED: 1

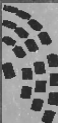
Committee Clerk Comment:



1995

**SENATE
APPROPRIATIONS
SUBCOMMITTEE ON
HUMAN RESOURCES**

MINUTES



FISCAL RESEARCH DIVISION

TEAM ASSIGNMENTS

DEPARTMENT OF HUMAN RESOURCES

<u>DIVISION/PROGRAM</u>	<u>ANALYST/BACKUP ANALYST</u>
DIV. OF MEDICAL ASSISTANCE	CAROL SHAW/MES
-Medicaid	
Welfare Reform	Carol Shaw/KHB
Office of Rural Health	Carol Shaw/MES
Health Care Issues	Carol Shaw/MES
Health Reform Commission	Carol Shaw/MES
DIV. OF CHILD DEVELOPMENT	CAROL SHAW/MES
-Smart Start	
-Day Care Subsidy	
SECRETARY'S OFFICE	MARY ELLEN SYLVESTER/CS
-Support Our Students (SOS)	
DIVISION OF YOUTH SERVICES	MARY ELLEN SYLVESTER/CS
DIV. OF SERVICES FOR THE DEAF AND HARD OF HEARING	MARY ELLEN SYLVESTER/KHB
DIV. OF SERVICES FOR THE BLIND	MARY ELLEN SYLVESTER/KHB
-Governor Morehead School	
DIV. OF VOC REHABILITATION	MARY ELLEN SYLVESTER/KHB
DIVISION OF AGING	MARY ELLEN SYLVESTER/CS
DIVISION OF FACILITY SERVICES	MARY ELLEN SYLVESTER/CS
-Certificate of Need (CON)	
DIVISION OF SOCIAL SERVICES	CAROL SHAW & KAREN HAMMONDS-BLANKS
-Aid to Families with Dependent Children (AFDC)	Carol Shaw/KHB
-Food Stamps	Carol Shaw/KHB
-Employment Programs/JOBS	Carol Shaw/KHB
-AFDC-Emergency Assistance	Karen Hammonds-Blanks/CS
-Low Income Energy Assistance Programs (LIHEAP)	Karen Hammonds-Blanks/CS
-Crisis Intervention Program	Karen Hammonds-Blanks/CS
-Foster Care/Adoptions	Karen Hammonds-Blanks/CS
-State Abortion Fund	Karen Hammonds-Blanks/CS
-Child Support	Karen Hammonds-Blanks/CS
-State/County Special Assistance	for Adults/Rest Homes Karen Hammonds-Blanks/CS



FOURTH DAY

SENATE CHAMBER

Thursday, July 11, 1996.

The Senate meets pursuant to adjournment and is called to order by the Honorable Dennis A. Wicker, Lieutenant Governor.

Prayer is offered by the Reverend Mike Morris, Senate Chaplain, as follows:

"Almighty God, we always ask that You be an important part of the proceedings in this Senate Chamber. But today as the hurricane approaches, our thoughts and prayers are most earnestly directed in behalf of the people who reside on the coastline of our State.

"Some of our Senators live there with their families. All of us have friends or family members there.

"We remember Your Words of promise and protection spoken through the Prophet Isaiah, 'Do not fear, I have called You by name, You are Mine. When You pass through the waters I will be with you, and through the rivers they shall not overwhelm you.' We pray for all those who may encounter this storm. Please keep them out of harms way. Amen."

With unanimous consent, the President grants a leave of absence for today to Senator Forrester to cover his medical practice whose associate is taking Family Practice Board Exams, and to Senator Basnight to prepare for the threatening Hurricane 'Bertha.'

Senator Soles, Deputy President *Pro Tempore*, announces the Journal of yesterday, Wednesday, July 10, has been examined and is found to be correct. On his motion, the Senate dispenses with the reading of the Journal and it stands approved as written.

The President of the Senate extends courtesies of the floor to Dr. David B. Crosland from Mount Pleasant, who is serving the Senate as Doctor of the Day.

INTRODUCTION OF BILLS AND A RESOLUTION

Bills and a resolution filed for introduction are presented to the Senate, read the first time, and disposed of, as follows:

By Senators Horton, Kerr, Hoyle, Ballance, Ledbetter, Blust, Clark, Odom, Rand, and Gullett:

S.J.R. 30, a joint resolution directing the Department of Transportation to maintain the grounds at the home of Nathaniel Macon.
Referred to Appropriations Committee.

By Senators Winner, Martin of Pitt, Cooper, Martin of Guilford, and Allran: S.B. 31, a bill to extend the Child Fatality Task Force until 1999 as recommended by the Child Fatality Task Force.

Referred to Rules and Operation of the Senate Committee.

By Senators Kerr and Warren: S.B. 32, a bill to provide tax credits for donations of real property to protect and enhance water quality.
Referred to Finance Committee.

By Senator Martin of Pitt: S.B. 33, a bill to appropriate funds to the Agricultural Finance Authority for the reserve for farm loans.
Referred to Appropriations Committee.

By Senator Martin of Pitt: S.B. 34, a bill to appropriate funds to the North Carolina Biotechnology Center for the business development program.
Referred to Appropriations Committee.

By Senators Martin of Pitt, Warren, and Rand: S.B. 35, a bill to increase the monthly pension payments for qualified firemen and eligible rescue squad workers.
Referred to Appropriations Committee.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Special messages received in the office of the Principal Clerk from the House of Representatives transmitting bills are presented to the Senate, read the first time, and disposed of, as follows:

H.B. 53, a bill to amend the budget and to appropriate funds for public education and for salary increases for teachers and State employees.
Referred to Appropriations Committee.

Senator Cochran offers a motion the rules be suspended to the end the bill be taken from the Appropriations Committee and placed before the Senate for immediate consideration which motion she subsequently withdraws due to the statutory requirement of G.S. 120-111.3 mandating review by the **Pensions and Retirement/Insurance/State Personnel Committee** prior to consideration of the measure upon its passage.

H.B. 52, a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State.
Referred to Appropriations Committee.

On motion of Senator Soles, seconded by Senator Conder, the Senate adjourns at 10:33 A.M. to meet Monday, July 15, at 7:00 P.M.



"An unknown source illustrates that truth this way:

A little boy was overheard talking to himself as he strode through his backyard, baseball cap in place and toting ball and bat. 'I'm the greatest baseball player in the world,' he said proudly. Then he tossed the ball in the air, swung and missed. Undaunted, picked up the ball, threw it into the air and said to himself, 'I'm the greatest player ever!' He swung at the ball again, and again he missed. He paused a moment to examine bat and ball carefully. Then once again he threw the ball into the air and said, 'I'm the greatest baseball player who ever lived.' He swung the bat hard and again missed the ball.

'Wow!' he exclaimed. 'What a pitcher!'

"Those of us who wish to sing always find a song. Let us sing Your Song, O God, gladly, today. Amen."

Senator Soles, Deputy President *Pro Tempore*, announces the Journal of yesterday, Monday, July 15, has been examined and is found to be correct. On his motion, the Senate dispenses with the reading of the Journal and it stands approved as written.

The President of the Senate extends courtesies of the floor to Dr. Herbert M. Baker from Eden, who is serving the Senate as Doctor of the Day.

The Chair extends courtesies of the gallery to C.C. Cameron, newly elected Chairman of the Board of Governors of the University of North Carolina.

REPORT OF COMMITTEE

A bill is reported from a standing committee, read by its title, together with the report accompanying it, and takes its place on the Calendar, as follows:

By Senator Plyler for the Appropriations Committee:

→ **H.B. 53**, a bill to amend the budget and to appropriate funds for public education and for salary increases for teachers and State employees, with an unfavorable report as to bill, but favorable as to Senate Committee Substitute bill.

On motion of Senator Plyler, the proposed Senate Committee Substitute bill 4291, which changes the title, upon concurrence, to read **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with actuarial notes attached, is placed before the Senate for immediate consideration.

On motion of Senator Plyler, the Senate Committee Substitute bill is adopted, and on his further motion the Senate Committee Substitute bill is re-referred to the **Pensions and Retirement/Insurance/State Personnel Committee** with a recommendation, upon a favorable report, for referral to the **Finance Committee**.

With unanimous consent, the Senate recesses at 11:11 A.M. for the purpose of a meeting of the **Pensions and Retirement/Insurance/State Personnel Committee** to reconvene at 11:28 A.M.

July 16, 1996

RECESS

The Senate meets pursuant to recess and is called to order by the Honorable Dennis A. Wicker, Lieutenant Governor.

With unanimous consent, the President grants a leave of absence for the remainder of today's Session to Senator Hartsell.

REPORT OF COMMITTEE

A bill is reported from a standing committee, read by its title, together with the report accompanying it, and takes its place on the Calendar, as follows:

By Senator Soles for the Pensions and Retirement/Insurance/State Personnel Committee:

→ **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with a favorable report.

On motion of Senator Soles, the Senate Committee Substitute bill is re-referred to the **Finance Committee**.

With unanimous consent, the Senate recesses at 11:29 A.M. for the purpose of a meeting of the **Finance Committee** to reconvene at 12:07 P.M.

RECESS

The Senate meets pursuant to recess and is called to order by the Honorable Dennis A. Wicker, Lieutenant Governor.

REPORT OF COMMITTEE

A bill is reported from a standing committee, read by its title, together with the report accompanying it, and takes its place on the Calendar, as follows:

By Senator Sherron for the **Finance Committee**:

H.B. 53 (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with a favorable report.

On motion of Senator Basnight, the rules are suspended to the end the Senate Committee Substitute bill remains before the Senate for immediate consideration upon its passage.

The Chair extends courtesies of the gallery to Sithembiso G.S. Nyoni, Deputy Minister of Ministry of Public Construction and National Housing from Zimbabwe.

Senator Kincaid offers Amendment No. 1 which he subsequently withdraws.

Senator Kincaid offers a motion that the vote by which the Senate Committee Substitute bill was adopted be reconsidered, which motion fails to prevail (23-26).

Senator Ballantine offers Amendment No. 2.

Senator Gulley offers Amendment No. 3, held to be germane, to substitute for Amendment No. 2, offered by Senator Ballantine.

ANNOUNCEMENT

H.B. 18 (Senate Committee Substitute)

H.B. 53 (Senate Committee Substitute)

The Chair recognizes Senator Basnight, President *Pro Tempore*, who announces the following Senators shall represent the Senate upon consideration of differences arising between the two Bodies on H.B. 18 (Committee Substitute), a bill to phase out the State sales tax on food over four years, phase down the corporate income tax over four years, allow income and franchise tax credits for investments in business property and for research and development, phase out the soft drink tax over three years, reduce the sales tax rate on electricity and natural gas used in farming and manufacturing, modify the sales tax treatment of bundled transactions and free items given away by merchants, simplify and reduce inheritance and gift taxes, exempt from income tax severance wages paid due to plant closings, expand the property tax homestead exemption, and allow tax incentives for charitable donations, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read H.B. 18 (Senate Committee Substitute), a bill to allow income and franchise tax credits for investment in machinery and equipment, creating jobs, increasing research and development, and worker training, to modify the sales tax treatment of bundled transactions, to expand the property tax homestead exemption, and to reduce the franchise tax on certain inventories; and H.B. 53, a bill to amend the budget and to appropriate funds for public education and for salary increases for teachers and State employees, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read H.B. 53 (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State: Senator Plyler, Chair, and Senators Perdue, Odom, Sherron, Kerr, Conder, Rand, Martin of Guilford, Martin of Pitt, Plexico, Winner, Hoyle, Warren, Ballance, Cooper, Gulley, Jordan, and Lucas.

NOTICE

Senator Sherron gives notice under Rule 77 of his intention to introduce an enabling resolution to allow consideration of S.B. 26, a bill to make changes in the Administrative Procedure Act, to make changes in various laws granting the power to adopt rules, to clarify the reporting date of the Joint Legislative Administrative Procedures Oversight Committee, and to clarify the requirements concerning certain removals of underground storage tanks, which measure is on the Calendar for tomorrow, Tuesday, July 23.

On motion of Senator Basnight, seconded by Senator Blackmon, the Senate adjourns at 7:50 P.M. to meet tomorrow, Tuesday, July 23, at 10:30 A.M.

SPECIAL MESSAGE FROM THE HOUSE OF REPRESENTATIVES

→ **H.B. 53**
(Senate Committee Substitute)

House of Representatives
July 23, 1996

Mr. President:

It is ordered that a message be sent your Honorable Body with the information that the House failed to concur in Senate Committee Substitute for **HB 53**, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE, the Speaker has appointed as conferees on the part of the House, Representatives Holmes, Esposito, and Creech, Co-Chairs; Daughtry, Russell, Bowie, Grady, Preston, Weatherly, Mitchell, Thompson, Justus, Gardner, Lemmond, Ives, Nye, Crawford, Cummings, Kiser, Morgan, Arnold, C. Wilson, and Gray to act with a like committee on the part of the Senate to the end that the differences existing between the two bodies may be adjusted.

Respectfully,
S/Denise Weeks
Principal Clerk

With unanimous consent, the President grants a leaves of absence for the remainder of today's Session to Senator Horton.

With unanimous consent, Senator Basnight, President *Pro Tempore*, appoints Senator Plyler, Chairman, and Senators Perdue, Odom, Sherron, Kerr, Conder, Rand, Martin of Guilford, Martin of Pitt, Plexico, Winner, Hoyle, Warren, Ballance, Cooper, Guley, Jordan, Lucas, Little, and Hartsell as conferees on the part of the Senate to resolve the differences arising between the two Bodies and a message is ordered sent to the House of Representatives informing that Honorable Body of such action.

ADDITIONAL APPOINTMENTS

H.B. 52, a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, which Senate Committee Substitute bill proposes to change the title upon concurrence to read, **H.B. 52** (Senate Committee Substitute), a bill to make changes in the budget operation of the State and to strengthen the Juvenile Justice System, with conferees having been appointed on July 18.

Senator Basnight, President *Pro Tempore*, appoints Senator Little and Senator Hartsell as additional conferees on the part of the Senate to resolve the differences arising between the two Bodies and a message is ordered sent to the House of Representatives informing that Honorable Body of such action.

With the bill on today's Calendar remaining, on motion of Senator Basnight, seconded by Senator McDaniel, the Senate adjourns at 1:44 P.M. to meet tomorrow, Wednesday, July 24, at 10:30 A.M.

July 23, 1996

The President thanks Speaker Uosukainen for her remarks and presents her with a North Carolina Flag and a copy of the Senate Rules. The President recognizes the committee who escorts the Honorable Riita Uosukainen from the Chamber with Members standing.

BILL FILED FOR INTRODUCTION

The Chair recognizes Senator McDaniel who offers a motion that following the first reading of **S.B. 45**, filed for introduction earlier today that the rules be suspended to the end the bill remain before the Senate for immediate consideration upon its passage. The Chair entertains the motion and calls for the introduction of bills, petitions, and resolutions.

INTRODUCTION OF A BILL

A bill filed for introduction is presented to the Senate, read the first time, and disposed of, as follows:

By Senator McDaniel:

S.B. 45, a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995.

The motion of Senator McDaniel that the rules be suspended to the end the bill be placed before the Senate for immediate consideration upon its passage fails to prevail (21-24).

Senator Rand, Chairman of the **Rules and Operation of the Senate Committee**, pursuant to Rule 43, announces referral of the bill to the **Appropriations Committee**.

CONFERENCE COMMITTEE CONSIDERATION

H.B. 53, a bill to amend the budget and to appropriate funds for public education and for salary increases for teachers and State employees, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with conferees appointed on Tuesday, July 23.

Senator Ballantine rises and offers a motion to the end that Rule 57 be suspended to allow the Conference Committee to consider the lead paint certification issue contained in neither version of the measure in conference.

With no report from the Conference Committee before the Senate, the Chair rules the motion out of order. The Chair states, upon the submission of a conference report, a point of order would stand to the provisions of Rule 57 which read, as follows:

...In considering matters in difference between the Senate and House committed to the conferees, only such matters as are in difference between the two houses shall be considered by the conferees, and the conference report shall deal only with such matters. ...

On motion of Senator Basnight, seconded by Senator Plyler, the Senate adjourns at 1:55 P.M. to meet tomorrow, Friday, July 26, at 10:00 A.M.

July 25, 1996

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S.B. 46 (House Committee Substitute), an act to authorize studies by the Legislative Research Commission, to create and continue various commissions, to direct State agencies and Legislative oversight committees and commissions to study specified issues, to abolish the Health Care Reform Commission, and to amend the laws governing corporate reinstatement after dissolution. (Ch. 17)

CONFERENCE REPORT

→ **H.B. 53** (Senate Committee Substitute)

Senator Plyler, for the Conferees appointed to the Conferees appointed to consider the differences arising between the Senate and the House of Representatives upon **H.B. 53**, a bill to amend the budget and to appropriate funds for public education and for salary increases for teachers and State employees, which Senate Committee Substitute bill proposes to change the title, upon concurrence, to read **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, submits the following report for adoption:

*To: The President of the Senate
The Speaker of the House of Representatives*

The conferees appointed to resolve the differences between the Senate and the House of Representatives on House Bill 53, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND TO MAKE OTHER CHNAGES IN THE BUDGET OPERATIONS OF THE STATE, Senate Appropriations Committee Substitute Third Edition Engrossed 7/16/96, submit the following report:

The House of Representatives and the Senate agree to the following amendment to the Senate Appropriations Committee Substitute Third Edition Engrossed 7/16/96, and the House concurs in the Senate Appropriations Committee Substitute Third Edition Engrossed 7/16/96, as amended:

Delete the entire Senate Appropriations Committee Substitute Third Edition Engrossed 7/16/96, and substitute the attached Proposed Conference Committee Substitute H53-PCCS-4294.

The conferees recommend that the Senate and House of Representatives adopt this report.

Date conferees approved report: August 2 1996.

The conferees recommend that the Senate and the House of Representatives adopt this report.

Date conferees approved the report: August 2, 1996.

August 3, 1996

and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Clozaril Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of Clozaril atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Clozaril Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

Income (% of poverty)	State Participation	Client Participation
0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%
141-160%	75%	25%
161-180%	65%	35%
181-200%	65%	35%
201-220%	55%	45%
221-240%	45%	55%
241-260%	35%	65%
261-280%	25%	75%
281-300%	15%	85%
301%-over	5%	95%
	0%	100%.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."

Requested by: Representatives Gardner, Nye, Russell,
Senators Martin of Guilford, Lucas

MEDICAID SUBROGATION CHANGE/LRC STUDY

Sec. 24.2. (a) G.S. 108A-57 reads as rewritten:

"§ 108A-57. Subrogation rights; withholding of information a misdemeanor.

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of such this assistance, or of his the beneficiary's personal representative, his heirs, or the administrator or executor of his the estate, against any person. ~~It shall be the responsibility of the The county attorney attorney, or an attorney retained by the county and/or or the State or both, or an attorney retained by the beneficiary of the assistance if such this attorney has actual notice of payments made under this Part to shall enforce this section, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department; provided, however that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of such injury or death: section. Any attorney retained by the beneficiary of the assistance shall, out of the proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third~~

party by reason of injury or death, distribute to the Department the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered.

- (1) First to the payment of any court costs taxed by the judgment;
- (2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies;
- (3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one-third of the amount obtained or recovered to which the right of subrogation applies; and
- (4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It shall be a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

(b) The Legislative Research Commission may study issues relating to the Medicaid subrogation statute, G.S. 108A-57, including State compliance with federal law as it relates to recovery of Medicaid expenditures, the appropriate amount of attorneys' fees and costs, if any, the State should pay for recovery of Medicaid expenditures, and the appropriate amount, if any, that should be guaranteed to the client for whom the underlying action is brought.

(c) The Legislative Research Commission may report the results of its study, along with any legislative proposals and costs analyses, to the 1997 General Assembly.

(d) This section becomes effective as of the effective date of this act and applies to claims filed on or after August 15, 1995.

Requested by: Representatives Gardner, Hayes,
Senator Martin of Guilford

THOMAS S.

Sec. 24.4. Section 23.21 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

- (1) Adults with mental retardation, or who have been treated as if they

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the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Representatives Holmes, Creech, Esposito,
Senators Plyler, Perdue, Odom

EFFECT OF HEADINGS

Sec. 29.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Holmes, Creech, Esposito,
Senators Plyler, Perdue, Odom

SEVERABILITY CLAUSE

Sec. 29.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Holmes, Creech, Esposito,
Senators Plyler, Perdue, Odom

EFFECTIVE DATE

Sec. 29.6. Except as otherwise provided, this act becomes effective July 1, 1996.

On motion of Senator Plyler, the Conference Report is adopted (36-0) and a message is ordered sent to the House of Representatives informing that Honorable Body of such action.

Pursuant to Sec. 29.1, see the *Addendum* for the text of the document placed before the Senate entitled Joint Appropriations Committee House/Senate Conference Report on Budget Modifications, dated August 3, 1996, which had no accompanying correction sheets.

SPECIAL MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The following special message is received from the House of Representatives:

→ **H.B. 53**
(Senate Committee Substitute)

House of Representatives
August 3, 1996

Mr. President:

It is ordered that a message be sent your Honorable Body with the information that the House has adopted the report of the Conferees on **HB 53, A BILL TO BE ENTITLED AN ACT TO MODIFY THE CONTINUATION BUDGET OPERATIONS APPROPRIATIONS ACT OF 1995, AND THE EXPANSION AND CAPITAL IMPROVEMENTS ACT OF 1995, AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF THE STATE.** Pursuant to the receipt of your message that your Honorable Body has adopted the report of the Conferees, we will order the bill enrolled.

Respectfully,
Denise G. Weeks
S/sw
Principal Clerk

August 3, 1996

EXPLANATION OF VOTE

→ **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with the Conference Report adopted earlier today.

Senator Horton, pursuant to Rule 30, rises to explain his vote on the adoption of the Conference Report. On motion of Senator Ballance, with unanimous consent, his remarks are spread upon the Journal, as follows:

By Senator Horton:

"Thank you, Mr. President. Members of the Senate, I voted for this bill, as I suspect many of us did, with, of course, some reservations. It isn't going to satisfy anyone.

"One piece, however, I think is one that is going to be most important to us and the Senator from Craven alluded to it a moment ago; and that is the problem of cleaning up our streams and rivers in the eastern part of our State. This bill has completely excised any reference to mandatory buffers, any reference to mandatory restrictions of farmers, or corporate development and so forth polluting our streams. The Senator from Dare knows as well as anyone that hardly a week goes by that some man has to hang it up; has to give up fishing as a livelihood. I bet a number of his own friends have had to quit what their ancestors have done because we have let our waters become so polluted, so rife with fish kills, our shell beds—Senator Martin, remember the oysters down there below Washington—no longer. What used to be the richest marine area in the eastern United States, well the Tar Pamlico is commercially dead. Unless we have some way to keep agriculture from polluting their neighbors downstream, from destroying the fish, this thirty-some million dollars and this marvelous program which I commend, is going down the tubes. And I confidently predict that some sunny day the Senator from Craven will be able to take her family for a stroll along the banks of the noble Neuse, and watch the dead fish float by."

PERSONAL PRIVILEGE

Senator Basnight rises to a point of personal privilege and Lieutenant Governor Wicker directs, with unanimous consent, his remarks spread upon the Journal, as follows:

By Senator Basnight:


"To the Members of the Senate, I echo much of what Senator Horton says. And he certainly believes, as I do, that the deterioration is in part because of our previous inactions in retaining the waste that comes from agricultural operations in the form of spraying or fertilizing, or feeding our stock; not having in place regulations that will protect the waterways. That is gradually changing as we can see.

"But that blame cannot in totality lie just in the farming community. I'll give you an example, Senator Horton. I live on Shallibag Bay, a tributary of the Roanoke Sound, so named by our first colonists many, many years ago. That water, when I grew up, was a place where you could find shellfish. You could find fin fish. You could find shrimp and crabs, abundantly so. In fact, many of the families sustained themselves from what could be had there on that small bay. People could row in the waters of Shallibag and catch fish, striped bass. You could



preacher, I noticed, was praying; he was excited about it and he was looking upward, and I, I assume was praying. But any way, the explosion went off, and mud and bull rush and stumps and roots went up higher than any building in this city. And they just really covered the earth for a good bit. And after everything had settled I went back to see if I could find a part of the dog. And, lo and behold, he was down in the ditch covered up with mud. And I saw him wiggling a little bit, thought at first it was a turtle. And he came up a little more, and I saw it was the dog. So I figured he was, had a little life left so I jumped down in the mud and pulled him out. Got him out, carried him out to the branch and washed him off and he was sort of chilly. It was early in spring. And I carried him to the house and put him in the bathtub with warm water and washed him. The dog never missed a meal. That's the honest truth! One of the most miraculous thing, experiences I have ever had. And I just assumed, Senator Ballance, that the Afra-American preacher had a part in it. Thank you."

RECORDED VOTES

 **H.B. 53** (Senate Committee Substitute), a bill to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State, with the Conference Report having been adopted earlier today.

Arriving in the Chamber, Senator Lucas and Senator Hartsell offer a motion the rules be suspended to the end they may be allowed to be recorded voting for the adoption of the Conference Report. The Chair fails to entertain the motion citing the Senate no longer in possession of the measure upon receipt of a message from the House of Representatives of its adoption of the Conference Report and order of its enrollment.

The Chair orders the Journal reflect Senator Lucas and Senator Hartsell support adoption of the Conference Report.

SPECIAL MESSAGE FROM THE HOUSE OF REPRESENTATIVES

A special message is received from the House of Representatives transmitting a joint resolution which is read the first time and disposed of, as follows:

H.J.R. 46 (Committee Substitute), a joint resolution providing for adjournment *sine die* of the 1996 Second Extra Session, received with House Amendment No. 1 not engrossed.

On motion of Senator Rand, the rules are suspended, without objection, and the joint resolution is placed before the Senate for immediate consideration upon its passage.

The joint resolution passes its second (34-0) and third readings and is ordered enrolled.

ENROLLED BILLS

The Enrolling Clerk reports the following bills and a resolution properly enrolled and they are duly ratified and sent to the Office of the Secretary of State:

August 3, 1996

→ **H.B. 53** (Senate Committee Substitute), an act to modify the Continuation Budget Operations Appropriations Act of 1995, and the Expansion and Capital Improvements Appropriations Act of 1995, and to make other changes in the budget operation of the State. (Ch. 18)

H.B. 30 (Senate Committee Substitute), an act to refund to federal retirees the unconstitutional taxes they paid on their pensions for tax years 1985 through 1988. (Ch. 19)

S.B. 2, an act to authorize Craven County to levy an additional room occupancy tax and to revise the existing Craven County room occupancy tax. (Ch. 20)

H.J.R. 46 (Committee Substitute), a joint resolution providing for adjournment *sine die* of the 1996 Second Extra Session. (Res. 1)

Ascertaining no further business to come before the Senate, the Chair orders a message sent to the House of Representatives informing that Honorable Body that the Senate has completed the business for which it was convened into a Second Extraordinary Session and stands ready to adjourn this Extra Session *sine die*, upon receipt of a like message from that Honorable Body.

SPECIAL MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The following special message is received from the House of Representatives:

H.J.R. 46
(Committee Substitute)

House of Representatives
August 3, 1996

Mr. President:

It is ordered that a message be sent your Honorable Body respectfully advising that in accordance with **HJR 46, A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE OF THE 1996 SECOND EXTRA SESSION**, the House of Representatives has concluded the public business before it and stands ready to adjourn.

Upon receipt of a message from your Honorable Body that the Senate is ready to open its doors, the doors of the House shall be open to the end that the gavels may fall simultaneously and adjournment may be declared *sine die*.

Respectfully,
Denise G. Weeks
S/sw
Principal Clerk

Senator Basnight, seconded by all Members present, offers a motion the Senate of the 1995 General Assembly, meeting in Extra Session under the call of the Governor, do now adjourn, *sine die*.

Pursuant to the message that the House of Representatives has concluded the business before it and having notified that Honorable Body that the Senate has completed the business before it, the President of the Senate declares the Senate stands ready for adjournment, *sine die*. The President orders the doors of the

August 3, 1996

Orders From On High: The Current Struggle over Medicaid Third Party Recovery Between North Carolina and the Supreme Court of the United States¹

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

INTRODUCTION

Suppose the following: Your client, an indigent, is injured in an automobile accident by a negligent driver. Unable to cover the medical expenses, your client applies for and is approved for Medicaid assistance. Medicaid then pays the full cost of the medical expenses arising from the accident. One year later you represent this victim in a suit against the negligent driver, eventually reaching a settlement. At some point during the proceedings, the state department responsible for administering Medicaid seeks reimbursement for the payments it made on behalf of your client. Unfortunately for your client, the amount Medicaid is seeking constitutes a majority of the settlement amount. How should this problem be handled? Should Medicaid be able to reimburse itself fully? If not, what percentage of the money expensed by Medicaid should be reimbursed? What if the damage claim includes elements other than medical bills, such as future or past lost wages?

By way of statute and the decision in *Ezell v. Grace Hospital*,² North Carolina purports to have answered these questions. However, the recent decision of the Supreme Court of the United States in *Arkansas ADHHS v. Ahlborn*³ has rendered the North Carolina approach moot.⁴ These contradicting decisions have resulted in an

1. The author would like to thank Yuliya Loshinsky, who first alerted him to this issue, and Christopher Nichols of the Nichols Law firm, Raleigh, North Carolina, whose guidance in the development of this Comment was invaluable.

2. 631 S.E.2d 131 (2006), rev. denied 342 N.C. 896 (2006).

3. *Arkansas Dep't of Health and Human Services v. Ahlborn*, 547 U.S. 268 (2006).

4. See generally John L. Saxon, *Medicaid "Liens" on Personal Injury Judgments and Settlements: The Ahlborn and Ezell Decisions*, Social Services Law Bulletin, Number 41, July 2006. See also JULIE L. BELL ET AL., NORTH CAROLINA PERSONAL INJURY LIENS MANUAL 160-62 (Christopher R. Nichols ed., 2007).



unstable personal injury environment for Medicaid beneficiaries in North Carolina.

This Comment will first present a brief legal background of the Medicaid program, and specifically its presence in North Carolina. It will then explore the federal statutes which broadly govern Medicaid recovery from third parties, as well the North Carolina Medicaid statutes which specifically govern this area of recovery. It will explore the two decisions, *Ezell* and *Ahlborn*, which have clouded this area in North Carolina. Following that explanation, the aforementioned hypothetical will be revisited and taken through both the North Carolina and United States Supreme Court's analytical models. Finally, suggestions for both statutory and judicial resolutions of this issue will be presented. As the legal world of Medicaid is extensive, the scope of this Comment will necessarily be limited to Medicaid's recovery from liable third parties.

THE MEDICAID PROGRAM

I. GENERAL BACKGROUND

Launched as a cooperative venture of the federal and state governments in 1965, the Medicaid program was intended to alleviate the burden of health care costs borne by impoverished Americans.⁵ Medicaid pays health care providers for the medical care that is given to certain citizens who are unable pay for the care themselves.⁶ Medicaid is structured such that the federal and state governments share the costs of providing that care.⁷ There is no federal mandate for states to participate; however, all of the states do, and maintain a Medicaid program in one form or another.⁸ For many states, Medicaid is the one of

5. "Medicaid represents a major attempt by the federal government to improve access to medical care for the poor. Its enactment in 1965 (as an amendment to the Social Security Act of 1935) arguably represented the high-water mark of then-President Lyndon Johnson's 'War on Poverty.'" Judith M. Rosenburg & David T. Zaring, *Managing Medicaid Waivers: Section 1115 and State Health Care Reform*, 32 HARV. J. ON LEGIS. 545 (1995).

6. "Medicaid provides health insurance to pregnant women, low income children, parents of dependent children, seniors (age 65 or older), people with disabilities, and certain other specified groups (such as women diagnosed with breast or cervical cancer). In addition to belonging to one of these target groups, Medicaid recipients must satisfy certain financial requirements in order to qualify. Medicaid also supplements Medicare coverage for many low income seniors or people with disabilities." LISA J. BERLIN, AN OVERVIEW OF MEDICAID IN NORTH CAROLINA 1, http://www.familyimpactseminars.org/s_ncfis01c01.pdf (last visited Mar. 8, 2008).

7. 42 U.S.C. § 1396b(a) (2000).

8. *Ahlborn*, 547 U.S. at 268 (2006).



the largest expenditures, often second only to education.⁹ Even still, federal monies constitute the significant majority of the overall funding for Medicaid.¹⁰ As a condition of having a Medicaid program and receiving this federal funding, the states are required to adhere to federal statutory guidelines.¹¹ These guidelines are broad and allow the states to determine, among other things, the particular eligibility requirements, the nature of the services offered, and the means of administration.¹²

II. THE FEDERAL GUIDELINES

The federal statutes which govern Medicaid are found in Title XIX of the Social Security Act, particularly at 42 U.S.C. § 1396 *et seq.* These statutes provide the basic framework of the program, with the function of allowing the states to flesh out their respective Medicaid programs within its bounds. In order to provide this freedom to the states, the federal statutes are understandably broad. Many elements of Medicaid are mandated in this statutory scheme, but those statutes governing areas outside of state recovery from liable third parties are not within the scope of this Comment.

A. Federal Medicaid Third Party Liability

Medicaid was intended to provide assistance to the poor, but it was not intended to act as an insurance policy.¹³ The program was intended to be, and for the most part operates as, a payer of last resort.¹⁴ Thus, the federal statutes require the states who participate in Medicaid to take all reasonable measures to ascertain the legal liability

9. Abigail R. Moncrieff, *Payments to Medicaid Doctors: Interpreting the "Equal Access" Provision*, 73 U. CHI. L. REV. 673 (2006).

10. E.g. in 2006, the federal government paid 60.69% of North Carolina's Medicaid expense, North Carolina paid 33.98% combined, and the counties paid 5.34%. NORTH CAROLINA DEP'T OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE, MEDICAID IN NORTH CAROLINA, ANNUAL REPORT 65 (2006), <http://www.ncdhhs.gov/dma/2006report/2006report.pdf>. See also *Ahlborn*, 547 U.S. at 275 (2006) (stating "... the Federal Government pays between 50% and 83% of the costs the State incurs for patient care ..."); The exact percentage of the federal contribution is calculated under a formula keyed to each State's per capita income. 42 U.S.C. § 1396a (2000).

11. See 42 U.S.C. § 1396(a) (2000).

12. NORTH CAROLINA DEP'T OF HEALTH AND HUMAN SERVICES, HISTORY OF NORTH CAROLINA MEDICAID PROGRAM STATE FISCAL YEARS 1970 TO 2006 1 (2006), <http://www.dhhs.state.nc.us/dma/historyofmedicaid.pdf>.

13. Suzanne G. Clark, *An Accident Waiting to Happen: Arkansas Department of Health and Human Services v. Ahlborn Exposes Inequities in Medical Benefits Legislation*, 60 ARK. L. REV. 533 (2007).

14. See S. Rep. No. 99-146 (1985), 1986 U.S.C.C.A.N.



of third parties.¹⁵ Once the liability is ascertained the federal statutes require the state to seek reimbursement to the extent of the legal liability.¹⁶ To facilitate recovery of such monies from liable third parties, states are mandated to pass laws which provide the states a means to recover these monies.¹⁷ In situations where a third party has a legal liability to make payments for medical bills and services on behalf of a beneficiary, the states are required to have in place laws under which the state is deemed to have acquired the beneficiary's rights to those payments.¹⁸ Similar to this is the requirement that states have effective laws which allow the state to recover medical expenses paid on behalf of the beneficiary from the third party.¹⁹ Thus Medicaid beneficiaries must agree to allow Medicaid to seek payment from third parties as a condition to receiving Medicaid benefits.²⁰ In addition, should a beneficiary be awarded or receive monies, federal statutes enable the state to reimburse itself before the proceeds are remitted to the beneficiary.²¹

B. *Federal Medicaid's Ambiguities*

As a product of the broad nature of the federal Medicaid guidelines, many questions were, and to an extent still are, unanswered. While the statutory scheme must be broad in order to accomplish the goal of individual state administration, it is precisely this vague governance which led to the various court interpretations that ultimately have resulted in the current struggle in North Carolina.

These issues are apparent on the face of the statute. The statutes do not uniformly describe the types of third party payment from which the government can recover, nor do they definitively state the limitations of the recovery other than to proscribe liens against beneficiary's property during the beneficiary's lifetime.²² In addition to the ambiguous provisions, some provisions seem to stand in contradiction to each other. For example, 42 U.S.C. § 1396k(a) limits the state's recovery to third party compensation for medical expenses, while other statutes state that the state shall seek reimbursement to the full

15. 42 U.S.C. § 1396a(a)(25)(A) (2000).

16. § 1396a(a)(25)(B); § 1396k(a)(1)(A).

17. See § 1396k(a); 1396a(a)(25)(H).

18. § 1396k(a). "[T]he statute does not sanction an assignment of rights to payment for anything other than medical expenses-not lost wages, not pain and suffering, not an inheritance." *Ahlborn*, 547 U.S. at 281 (2006).

19. § 1396(a)(25)(H).

20. See 42 C.F.R. § 433.136 (2005).

21. 42 U.S.C. § 1396k(b) (2000).

22. See § 1396a(a)(25)(A); § 1396k(a)(1)(A); § 1396p(a)(1).



extent of the legal liability of a third party.²³ However, regardless of these, and any, ambiguities within these statutes, it is within them that the states are allowed to set up their respective programs. At first glance, the North Carolina statutes seem to operate well within their federal parents, but upon closer inspection subtle differences, which carry significant effect, are revealed.

III. NORTH CAROLINA MEDICAID: THIRD PARTY LIABILITY STATUTES

North Carolina's Medicaid program was created in 1969, and began operating in 1970.²⁴ The program is principally governed by chapter 108A of the North Carolina General Statutes. It is administered by the North Carolina Division of Medical Assistance (hereinafter "NC DMA") and otherwise by various county authorities.²⁵ As such, the NC DMA would be the party to initiate recovery or reimbursement from a third party when a settlement or verdict becomes available.²⁶ Since Medicaid is a statutory creature on both the federal and state level, the rights surrounding it and its benefits are purely statutory.²⁷

For the purposes of this Comment, the most important statutes are those which govern third party liability. These three statutes are section 108A-57, 108A-59, and to a certain extent, 108A-70(b) of the North Carolina General Statutes.

Section 108A-57 gives the state a general right of subrogation where third party liability is present.²⁸ It specifically states that the

23. Compare § 1396a(a)(25)(B) (2000) with § 1396k(a)(1)(A).

24. NORTH CAROLINA DIVISION OF MEDICAL ASSISTANCE, HISTORY OF NORTH CAROLINA MEDICAID PROGRAM STATE FISCAL YEARS 1970 TO 2006 I, <http://www.dhhs.state.nc.us/dma/historyofmedicaid.pdf>.

25. *Id.*

26. The NC DMA has been allowed by the Court to intervene in settlement proceedings to assert a Medicaid lien on behalf of the state. See e.g., *Payne by Rabil v. State Dep't of Human Resources Division of Medical Assistance*, 126 N.C. App. 672 (1997), rev. denied 347 N.C. 269; *Ezell v. Grace Hosp.*, 360 N.C. 529 (2006).

27. For example, subrogation is a right arising from, and normally governed by, the common law. See generally *General Insurance Co. of Am. v. Faulkner*, 259 N.C. 317, 324, 130 S.E.2d 645, 651 (1963). However, North Carolina has stated that since this right is codified, it is governed by the statutes, and not by the common law. *Ezell v. Grace Hosp.*, 175 N.C. App. 56, 60 (2006).

28. John L. Saxon, *Medicaid "Liens" on Personal Injury Judgments and Settlements: The Ahlborn and Ezell Decisions*, Social Services Law Bulletin, Number 41 (July 2006) ("Subrogation" may be defined broadly as the substitution of one party (the subrogee) in place of another (the subrogor) with respect to the second party's (subrogor's) legal right or claim against a third part (the obligor)."); see also, *Id.* at n.23. ("The subrogee, therefore, 'stands in the shoes' of the subrogor with respect to the subrogor's claim against the third party. Because subrogation puts the subrogee in



state is subrogated to the extent of all Medicaid payments made on behalf of a Medicaid beneficiary to all rights of recovery against any person.²⁹ It also states that the amount of Medicaid's claim or lien is based on the amount that Medicaid paid on behalf of the beneficiary.³⁰ The amount or the enforceability of the claim does not change based on the liability of a third party, such as a tortfeasor's insurance company, to the beneficiary.³¹ As far as notice to the beneficiary is concerned, Medicaid is not required to give notice of its lien to the beneficiary or the beneficiary's attorney.³²

While it may initially seem overbroad, this statute has a built-in limitation on the right of subrogation. In cases where the Medicaid beneficiary's attorney receives money in connection with the beneficiary's injury, payment of Medicaid's subrogation claim cannot exceed one-third of the gross amount received.³³ This statute does not interfere with the beneficiary's right to sue a potentially liable third party.³⁴ The beneficiary must disclose to the government the identity of a person or entity that the beneficiary has a claim against,³⁵ but there is no requirement that the beneficiary notify Medicaid that a suit against a third party has been initiated.³⁶

Seemingly similar to the right of subrogation, section 108A-59 builds on section 108A-57 by stating that the acceptance of Medicaid assistance by a Medicaid beneficiary constitutes an assignment of the Medicaid beneficiary's right to third party benefits.³⁷ Not only does

the position of the legal owner of the subrogor's right or claim against the third party it is similar, but not identical, to an assignment of the subrogor's right or claim by operation of law.").

29. N.C. GEN. STAT. § 108A-57 (2007).

30. *Id.*

31. *Id.*

32. BELL ET AL., *supra* note 4, at 149.

33. BELL ET AL., *supra* note 4, at 151, fn. 8 ("[n]ot[ing] that this one third limitation only applies when the plaintiff is represented by an attorney."); *see also*, N.C. GEN. STAT. § 108A-57 (2007).

34. N.C. GEN. STAT. § 108A-57 (2007).

35. § 108A-57(b) (2007) ("It is a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise.").

36. § 108A-57 (2007).

37. § 108A-59 (2007). Subrogation and assignment are distinct legal concepts. *See Payne v. Buffalo Reinsurance Co.*, 317 S.E.2d 408, 410-11 (1984). Thus, it is not entirely clear whether the state's claim against a third party is based on assignment or subrogation. *See John L. Saxon, Medicaid "Liens" on Personal Injury Judgments and*



the Medicaid beneficiary assign his or her rights to the state at the time he accepts the assistance, but Medicaid's lien against the proceeds in the amount of such payments vests on acceptance as well.³⁸ While North Carolina common law generally prohibits the assignment of the *right* to personal injury claims,³⁹ it does not prohibit assigning the *right to the proceeds* from personal injury claims.⁴⁰

Finally, section 108A-70(b) provides that to the extent that Medicaid has paid for a beneficiary's medical services or health care items, and where a third party has a legal liability to make those payments, the state is considered to have acquired the rights of the beneficiary to payment by any other party.⁴¹ While this statute addresses the right to payment, it is not germane to the conflict between the U.S. Supreme Court and North Carolina in this area.

DECISIONS, DECISIONS

For the past forty years, the Supreme Court was relatively unclear about how the states should interpret the application of the federal Medicaid third party liability statutes to their own programs. Many state supreme courts ruled in ways much similar to that of North Carolina.⁴² However, soon after the North Carolina ruling in *Ezell v. Grace*

Settlements: The Ahlborn and Ezell Decisions, Social Services Law Bulletin, Number 41, (July 2006).

38. *Payne v. State Dep't of Human Resources Division of Medical Assistance*, 126 N.C. App. 672 (1997), 486 S.E.2d 469 (1997) (holding that Medicaid's lien vested when the plaintiff beneficiary accepted Medicaid assistance), *rev. denied* 347 N.C. 269, 493 S.E.2d 656.

39. *N.C. Baptist Hosp. v. Mitchell*, 88 N.C. App. 263, 266 (1987) (holding that it is void as against public policy to assign the right to a tort claim of action); *Horton v. New South Ins. Co.*, 122 N.C. App. 265, 268 (1996) (holding that action arising out of contract generally can be assigned; however, assignments of personal tort claims are void as against public policy because they promote champerty.).

40. The North Carolina Supreme Court distinguishes the assignment of a personal injury claim and the assignment of the right to the proceeds of a personal injury claim. This is based on the reasoning that by assigning the right to a personal injury claim, the assignee is in effect gaining control over the case, and thus any such assignment is void as against public policy. However, in the case of the assignment of the right to the *proceeds* from a personal injury action, the assignee has received no real control over the case, and therefore such an assignment is not violative of public policy and is otherwise valid. *See Charlotte-Mecklenburg Hosp. Authority v. First of Georgia Ins. Co.*, 340 N.C. 88, 91, 455 S.E.2d 655, 657 (1995).

41. N.C. GEN. STAT. § 108A-70(b) (2007).

42. *Wilson v. State*, 10 P.3d 1061 (Wash. 2000) (holding that the federal Medicaid statutes allow recovery from third-party settlements without restriction); *Houghton v. Dep't of Health*, 57 P.3d 1067 (Utah 2002) (holding that Medicaid liens against third-party settlements are valid because Medicaid is reimbursed before the proceeds



Hospital, the Supreme Court handed down the ruling in *Arkansas ADHHS v. Ahlborn*, which stands for the opposite proposition. These contradicting analytical approaches to lien calculation result in very different outcomes for the Medicaid beneficiary plaintiff in a tort action.

I. EZELL V. GRACE HOSPITAL

A. Background

This case arose from a medical malpractice claim against a hospital and a pediatrician.⁴³ Soon after Michelle Morland was born, she developed a respiratory distress condition.⁴⁴ Her pediatrician, Dr. John F. Whalley, initiated treatment for the next several hours until Michelle was finally moved to another hospital.⁴⁵ Medicaid covered the cost of this initial treatment, and some of the resulting treatment.⁴⁶ Years later, Michelle was diagnosed with cerebral palsy.⁴⁷

Suspecting a link between the care Michelle received post-birth and her cerebral palsy condition, Michelle's grandmother and guardian ad litem brought a malpractice action against Grace Hospital, Dr. Whalley, and his employer Mountain View Pediatrics.⁴⁸ Early in the proceeding, the plaintiff settled with defendant Grace Hospital for \$100,000.00.⁴⁹ During discovery depositions, expert testimony was taken which significantly damaged any causal link between the actions of the pediatrician and the cerebral palsy.⁵⁰ This prompted a settlement between the plaintiff and the pediatrician, again for \$100,000.00.⁵¹

At the settlement approval hearings, NC DMA asserted the state's right to reimbursement for monies paid on behalf of the beneficiary by Medicaid.⁵² Medicaid's total lien was \$86,840.92.⁵³ The trial judge

become the property of the beneficiary.); *but c.f.* *Martin v. City of Rochester*, 642 N.W.2d 1 (Minn. 2002) (holding that the federal Medicaid statutes restrict the state's recovery for Medicaid liens to the amounts representing compensation for medical expenses.).

43. *Ezell v. Grace Hosp.*, 175 N.C. App. 56, 58 (2005).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Ezell v. Grace Hosp.*, 175 N.C. App. 56, 58 (2005).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 58-59.

52. *Ezell v. Grace Hosp.*, 175 N.C. App. 56, 59 (2005).

53. *Id.*



approved the settlement, but limited NC DMA's recovery to \$8,054.01. This reduced amount represented the *past* medical expenses he determined to be *causally related* to the alleged negligence of the remaining defendants, Dr. Whalley and Mountain View Pediatrics.⁵⁴

B. *The Appeal*

NC DMA filed a timely appeal, asserting that the trial court erred by limiting the Medicaid lien to the amount Medicaid paid for the medical expenses causally related to the defendant's negligence.⁵⁵ The North Carolina Court of Appeals denied NC DMA's appeal, reading the section 108A-57 narrowly and finding that the subrogation is limited to the amount arising from the injury itself.⁵⁶ In justifying this narrow reading, the court stated that "the legislature surely did not intend that DMA could recoup for medical treatment unrelated to the injury for which the beneficiary received third-party recovery."⁵⁷ To further rebut NC DMA's argument, the court used an illustrative hypothetical, explaining that under NC DMA's statutory construction, a Medicaid beneficiary cancer patient who is injured in an automobile accident and who settles with a third party could have Medicaid impose a lien for the prior cancer treatments on the settlement, even though the settlement was for injuries arising out of the automobile accident.⁵⁸

C. *The Dissent and Final Ruling*

Judge Steelman dissented in part, stating that DMA was entitled to full recovery under North Carolina law.⁵⁹ Judge Steelman relied primarily on the decisions of *Campbell v. NC Dep't of Human Resources*⁶⁰ and *Cates v. Wilson*⁶¹ in formulating his dissent. He read section 108A-57 broadly and claimed, among other things, that the majority had incorrectly read clearly separate sentences in the statute as one.⁶² This

54. *Id.*

55. *Id.*

56. *Ezell v. Grace Hosp.*, 175 N.C. App. 56, 63 (2005).

57. *Id.* at 61.

58. *Id.*

59. *Id.* at 63-64.

60. 153 N.C. App. 305 (2002) (Holding that it was irrelevant whether a settlement compensated a plaintiff for medical expenses because North Carolina's subrogation statute does not restrict defendant's right of subrogation to a beneficiary's right of recovery only for medical expenses).

61. 321 N.C. 1 (1987) (Holding that North Carolina law entitles the state to full reimbursement for any Medicaid payments made on a plaintiff's behalf in the event the plaintiff recovers an award for damages.)

62. *Ezell*, 175 N.C. App. at 64 (2005).



dissent is significant, because it not only provided an automatic appeal to the Supreme Court of North Carolina,⁶³ but it also eventually served as the basis for the court's reversal. On appeal, the North Carolina Court of Appeals was reversed, and Judge Steelman's dissent was adopted.⁶⁴

This case may be reflective of some other states' supreme court rulings,⁶⁵ but it is clearly in conflict with the United States Supreme Court's ruling in *Arkansas DHHS v. Ahlborn*, and is therefore no longer good law.

II. ARKANSAS DHHS v. AHLBORN

A. Decision

In 1996, Heidi Ahlborn was injured in a car accident that was allegedly caused by the negligence of another driver.⁶⁶ She was unable to pay for her medical care, so she applied and was accepted for Arkansas' Medicaid assistance.⁶⁷ Arkansas Medicaid paid approximately \$215,000.00 in various medical bills and expenses which arose from the car accident.⁶⁸

Heidi Ahlborn brought an action, the following year, against the driver of the vehicle who injured her.⁶⁹ The claim included past and future medical expenses, lost wages, and lost wage potential.⁷⁰ In 1998, the Arkansas Department of Health and Human Services (hereinafter "ADHHS") intervened in the pending lawsuit and asserted a lien in the amount of \$215,645.30 for medical bills and expenses paid on behalf of Ahlborn.⁷¹ In 2002, the remaining parties to the action agreed to settle the claim for \$550,000.00.⁷² As part of the settlement, Ahlborn and ADHHS stipulated that the settlement represented one-sixth of the total value of Ahlborn's claim.⁷³

ADHHS argued that the lien should be paid in full from the settlement.⁷⁴ Ahlborn argued that the lien attached only to that portion of

63. N.C. R. App. P. 14(b)(1).

64. *Ezell v. Grace Hosp.*, 360 N.C. 529 (2006).

65. Discussion, *supra* note 42.

66. *Ahlborn*, 547 U.S. at 273, 274 (2006).

67. *Id.*

68. *Id.*

69. *Id.* at 273.

70. *Id.*

71. *Ahlborn*, 547 U.S. at 274.

72. *Id.*

73. *Id.*

74. *Id.*



the settlement allocated for *past* medical expenses related to the accident.⁷⁵ Ahlborn filed an action against ADHHS to resolve the matter. The federal district court found in favor of ADHHS, holding that the lien was valid and enforceable in full against the settlement because Ahlborn had assigned her right to *any* recovery from the third-party tortfeasor up to the full amount of the payments made on her behalf.⁷⁶

Ahlborn then appealed to the United States Court of Appeals for the Eighth Circuit, which reversed, and held that the Arkansas Medicaid lien applied only to that portion of the settlement designated for payment of *past* medical expenses.⁷⁷ ADHHS then appealed to the Supreme Court of the United States, which granted certiorari and affirmed.⁷⁸

The Supreme Court held that Arkansas' third party liability lien attached *only* to the portion of Ahlborn's settlement that was designated for payment of past medical expenses paid by Medicaid.⁷⁹ This amount came out to \$35,581.47.⁸⁰ The Court went on to hold that the remainder of the claim could not be asserted against the remainder of the settlement.⁸¹ Specifically, the Supreme Court held that the Arkansas Medicaid third party liability statutes, namely the lien provision and the assignment provision, violated the federal Medicaid statute.⁸² Justice Stevens wrote for the majority, stating that the federal third party liability provisions require an assignment of *no more* than the right to recover the portion of the settlement proceeds which are designated for *past* medical bills paid by Medicaid.⁸³ The Court also concluded that federal statutes prohibit state Medicaid programs from asserting a third party liability claim against a Medicaid beneficiary's settlement or judgment for personal injury damages other than medical expenses.⁸⁴

B. *Practical Pitfalls of Ahlborn*

While *Ahlborn* seems to provide clarity, the opinion makes broad proclamations that may be difficult to implement. The most glaring example is centered on the apportionment of damages. The parties in

75. *Id.* at 268.

76. *Ahlborn*, 547 U.S. at 274.

77. *Id.* at 275.

78. *Id.* at 272.

79. *Id.*

80. *Id.* at 274.

81. *Ahlborn*, 547 U.S. at 280-81.

82. *Id.* at 286.

83. *Id.* at 282.

84. *Id.* at 286.



Ahlborn stipulated the total value of the claim and, in effect, stipulated what portion of the settlement the Medicaid lien represented.⁸⁵ It is reasonable to think this would not be the case in the average dispute, and such a situation would require the intervention of the court. Furthermore, *Ahlborn* requires the trial judge take into account all damages stemming from the negligence of the tortfeasor when calculating Medicaid's lien.⁸⁶ While the *Ahlborn* analysis may not be simple to implement, it is not beyond the comprehension of the North Carolina General Assembly and North Carolina court system.

III. DIFFERENCES HIGHLIGHTED

It is clear that the two decisions are in conflict with one another, and that the means of analysis presented by each are in contrast. What is less clear is how these contrasting analytical models affect the Medicaid beneficiary plaintiff. The two models result in significantly different ends for such plaintiffs. In order to illustrate this difference, we will return to the introductory hypothetical.

Suppose that in the hypothetical, the total value of your client's claim against the negligent third party is \$1,000,000.00. This claim includes damages for pain and suffering, past and future medical bills arising from the injury, and past and future lost wages. In addition, suppose that North Carolina Medicaid paid \$200,000.00 in medical bills arising from the injury for the client. A settlement is reached with the defendant in the amount of \$400,000.00. Assume that, either by stipulation or by a judge's decree, \$50,000.00 of this amount was apportioned for medical bills. During the proceedings, NC DMA asserts Medicaid's lien in the full amount of \$200,000.00. Finally, assume that your attorney's fees constitute one third of the gross settlement. To determine how the proceeds would be disbursed, we look to the contrasting analytical frameworks presented in the two aforementioned cases.

A. Ezell Analysis

Under *Ezell*, one must first determine the total settlement amount, which was \$400,000.00 in the above hypothetical. One-third, or \$133,333.33, of this amount would be allocated for your attorney's fees.⁸⁷ Since the amount of the Medicaid lien is determined by the

85. *Arkansas Dep't of Health and Human Servs. v. Ahlborn*, 547 U.S. 268, 274 (2006).

86. *See generally Id.* at 268.

87. In North Carolina, the assignment statute does not govern private attorney's fees arrangements between the attorney and client, and regulates the amount of the



amount of money that Medicaid expended on behalf of the beneficiary,⁸⁸ the initial lien amount would be \$200,000.00. However, pursuant to section 108A-57, the total Medicaid lien cannot exceed one-third of the gross settlement amount.⁸⁹ Thus, the lien amount would be reduced from \$200,000.00 to \$133,333.33. Therefore, in determining what amount is available to the client, we subtract the attorney's fees and the Medicaid lien, which amounts to \$266,666.66, from the settlement amount of \$400,000.00, to arrive at a sum of \$133,333.34 as the final disbursement to the client.

B. *Ahlborn Analysis*⁹⁰

Under *Ahlborn*, the amount available to the client is naturally different than under *Ezell*. The first step in this analysis is to determine how the damages are apportioned. For the purposes of this hypothetical, assume that the damages are apportioned (or pro-rated), either by the judge or by stipulation of the parties, as follows: \$200,000.00 in past medical bills (paid by Medicaid), \$400,000.00 for future medical bills, \$200,000.00 for past and future lost wages, and \$200,000.00 for pain and suffering. The next step is to determine the portion of total damages that the Medicaid lien constitutes. This is done by dividing the amount of the Medicaid lien, \$200,000.00, by the total settlement amount, \$1,000,000.00,⁹¹ resulting in 20%. The final step is to multiply the percentage of the total damages that the Medicaid lien constitutes by the amount of the lien.⁹² This calculation results in a Medicaid lien in the amount of \$40,000.00. Thus, when the attorneys' fees of \$133,333.33, together with the Medicaid lien of \$40,000.00 are subtracted from the total settlement of \$400,000.00, the amount available to the client is \$226,666.67.

attorney's fee only as it relates to the amount of the Medicaid lien payable to the plaintiff. See North Carolina Dep't of Human Resources, Division of Medical Assistance v. Weaver, 466 S.E.2d 717 (1996).

88. BELL ET AL., *supra* note 4, at 164.

89. N.C. GEN. STAT. § 108A-57 (2007).

90. The presentation of this hypothetical analysis is intended merely to highlight the differences between the two approaches to Medicaid lien calculation in *Ezell* and *Ahlborn*. The hypothetical fact pattern is abbreviated for ease of presentation. For a more detailed instruction on correctly applying the *Ahlborn* analysis in North Carolina, and for otherwise handling a claim of this nature, see JULIE L. BELL ET AL., NORTH CAROLINA PERSONAL INJURY LIENS MANUAL 164-70 (Christopher R. Nichols ed., 2007).

91. Arkansas Dep't of Health and Human Services v. Ahlborn, 547 U.S. 268 (2006).

92. *Id.*



THE CONFLICT

I. OVERVIEW

It is readily apparent that the Supreme Court of North Carolina's decision in *Ezell* is in conflict with the United States Supreme Court's decision in *Ahlborn*. Despite *Ahlborn*'s language, the Supreme Court of North Carolina simply applied the total lien to the total settlement, capped by the one-third subrogation limitation of section 108A-57.⁹³ The breakdown of the damages actually received in the settlement was not considered.⁹⁴ This application of a Medicaid lien is in direct conflict with the language of *Ahlborn*, which requires the trial judge (or stipulation of the parties) to divide up the settlement with respect to each of the claimed damages.⁹⁵ *Ahlborn* clearly states that Medicaid's lien should be reduced to a fair share of the recovery.⁹⁶

Notwithstanding the fact that the means of analysis are markedly different, reasons to change the current North Carolina Medicaid reimbursement extend beyond simply keeping with orders from a higher court. North Carolina has an interest in maintaining an efficient personal injury settlement system, and the reluctance to conform with *Ahlborn* has damaged that system. The solutions presented in *Ahlborn*, however, are not without issues themselves.

As previously noted, the *Ezell* and *Ahlborn* analyses are structurally different. Our hypothetical client would receive nearly \$100,000 more under the *Ahlborn* analysis. Under *Ahlborn*, the amount available to the client would invariably rise as the difference between the Medicaid lien and the value of the total damages rises.⁹⁷ This proration of the state's Medicaid lien ensures that the lien does not infringe on monies designated for other damages. The lien calculation in *Ezell* ignores this, allowing for the full amount of the lien to be asserted from the full amount of the settlement, unless the lien exceeds one-third of the gross settlement, at which point the lien would be reduced to one-

93. N.C. GEN. STAT. § 108A-57 (2007).

94. See generally *Ezell v. Grace Hosp. Inc.*, 631 S.E.2d 131 (N.C. 2006).

95. *Ahlborn*, 547 U.S. at 268.

96. *Id.* at 292.

97. For example, if the total value of the damages in this hypothetical were \$2,000,000 instead of \$1,000,000, the percentage that the Medicaid lien would represent would only be 10%. After proration, this would render a Medicaid lien in the amount of \$20,000 and a total amount of \$246,666.67 would be disbursed to the client.



third of the gross settlement.⁹⁸ The North Carolina Supreme Court has not recognized this difference. Not only was the supreme court made aware of the *Ahlborn* decision prior to ruling in *Ezell*,⁹⁹ but a petition in *Ezell* for rehearing in light of *Ahlborn* was later denied.¹⁰⁰

II. EFFECT OF THE CONFLICT ON NORTH CAROLINA LAW

This lack of uniformity has changed the landscape of personal injury settlement negotiations for Medicaid beneficiaries. The role of the state is in question, as are the aims of the lawyers on each side. Ambitious plaintiffs' lawyers will certainly attempt to implement an *Ahlborn* analysis, while the NC DMA will certainly stick to current North Carolina law and apply *Ezell*.¹⁰¹ This is not a productive personal injury settlement negotiation environment for either party in a suit and, furthermore, will work against judicial economy. Attorneys and judges alike must know the standard in order to correctly apply the law, and in this situation, the attorneys simply do not know the correct standard. Plaintiffs' attorneys will argue one way, and the NC DMA will argue another. Thus, North Carolina should not tarry in conforming to the United States Supreme Court's interpretation.

THE PATH AHEAD - RESOLUTIONS FOR A STUBBORN STATE

For all of the aforementioned reasons, the *Ahlborn* decision stands for the opposite proposition of the *Ezell* decision. North Carolina needs to fall in line with the federal statutes and case law. To begin, Medicaid is a state program which draws its authority from the federal statutes.¹⁰² Medicaid is a dominantly federally funded program, the seminal statutes are federal, and the United States Supreme Court has spoken as to how the statutes are to be interpreted. As such, attempts by state courts and legislatures, like the North Carolina Supreme Court in *Ezell*, to contravene will ultimately fail. The question is not whether such contravention will ultimately fail, but when. It would not require an overhaul of the North Carolina system to comply with *Ahlborn*, and as such it is the state's duty to correct the issue.

98. See *Ezell v. Grace Hosp., Inc.*, 623 S.E.2d 79, 84 (N.C. Ct. App. 2005) (Steelman, J., dissenting), *rev'd*, 631 S.E.2d 131 (N.C. 2006), *reh'g denied*, 641 S.E.2d 4 (N.C. 2006).

99. Both parties submitted notices to the Supreme Court of North Carolina, making it aware of the decision in *Ahlborn*. *Ezell*, 360 N.C. 529 (2006), review denied 342 N.C. 896 (2006). See also *BELL ET AL.*, *supra* note 4, at 160 n. 26.

100. See *Ezell*, 641 S.E.2d 4 (N.C. 2006).

101. See generally *BELL ET AL.*, *supra* note 4, at 147-246.

102. See 42 U.S.C. § 1396 (2000).



The solution to this problem must be statutory, as well as judicial. A condition of participation in Medicaid, and receiving relatively massive amounts of federal funding, is that the states regulate their own Medicaid programs in accord with federal Medicaid statutes.¹⁰³ While it can be argued that, at one time, the federal statutes were somewhat ambiguous on the issue of third party liability, any such ambiguity has since been resolved by *Ahlborn*. *Ahlborn* sets out a clear and applicable analytical framework under which these issues can be resolved. The North Carolina General Assembly bears the burden of drafting statutes which comply with the *Ahlborn* decision, but North Carolina courts have the obligation to apply *Ahlborn* now.

I. THE ADHERENCE OF THE NORTH CAROLINA COURTS

The first step is for the North Carolina court system to both respect and implement the decision of the United States Supreme Court. This is the most obvious solution, but it is not without complication.¹⁰⁴ The *Ahlborn* decision first requires that either the parties, or the courts by decree, apportion the damages by category.¹⁰⁵ This is contrary to North Carolina common law.¹⁰⁶ The solution is that in the instance of Medicaid third party liability, or otherwise in general, damages must be available for categorization. While it may otherwise be contrary to North Carolina case law,¹⁰⁷ North Carolina courts must be willing to apportion the damages should the parties be unable to stipulate the proportions themselves. In addition, the Supreme Court of North Carolina must be prepared to overrule the *Ezell* decision.¹⁰⁸

103. See generally 42 U.S.C. § 1396a (2000) (providing federal guidelines to state Medicaid programs).

104. The NC DMA has argued that *Ahlborn* does not apply in North Carolina based on distinctions between the Arkansas and North Carolina statutory schemes. *BELL ET AL.*, *supra* note 4, at 155. This failure by the NC DMA to apply *Ahlborn* is but one contributing factor to the uncertainty surrounding this issue in North Carolina.

105. *Ahlborn*, 547 U.S. 268 (2006).

106. See *Ezell v. Grace Hosp., Inc.*, 623 S.E.2d 79, 85 (N.C. Ct. App. 2005) (Steelman, J., dissenting) (stating “[o]ur cases have consistently rejected attempts by plaintiffs to characterize portions of settlements as being for medical bills or for pain and suffering in order to circumvent DMA’s statutory lien”).

107. *Id.*

108. The Supreme Court of North Carolina has the opportunity to resolve this issue in the ongoing case *Andrews, et. al., v. North Carolina Department of Health and Human Services, Division of Medical Assistance*. “Because I find that our Supreme Court has not yet squarely answered the question presented to us by this case, I certify by dissent for a decision on the issue of whether the amount of the State Division of Medical Assistance’s subrogation claim on a Medicaid recipient’s settlement is controlled by the United States Supreme Court decision in *Arkansas Department of*



II. STATUTORY CHANGE

While the North Carolina court system should be ruling under the instruction of *Ahlborn*, the real solution must come from the North Carolina General Assembly. To resolve any remaining ambiguities and improper case law, the North Carolina General Assembly should amend, pursuant to the U.S. Supreme Court's instruction, the statutes which govern Medicaid third party liability.

Section 108A-57 of the North Carolina General Statutes should be revised to read that the right of subrogation extends to those monies which are causally related to the cause of action of the plaintiff against the defendant. This would limit, in accordance with the statutory interpretation of *Ahlborn*, the right of subrogation and, effectively, the amount of the Medicaid lien, to the amount of the monies paid by Medicaid for the medical bills of the beneficiary. In a similar fashion, section 108A-59 should be amended such that the beneficiary's assignment of the right to payments from a third-party for medical bills extends only to those amounts which constitute payments for medical expenses. This could also be accomplished by creating a new statutory provision which simply codifies the *Ahlborn* decision.

Finally, the North Carolina General Assembly must create a means or method by which personal injury damages can be apportioned. This provision should be set up such that the parties may stipulate the apportionment of the damages. If the parties are not able to reach agreement, then the trial judge should have the authority to do so.¹⁰⁹ In the past, North Carolina plaintiffs have attempted to apportion damages in order to avoid the Medicaid lien.¹¹⁰ To protect the interest of the state in the proceedings, the statute should mandate that the NC DMA participate in the settlement negotiations. Such a mandate would not deter settlement, but would provide a back up means of resolution should an agreement fail to materialize.

Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).” *Andrews, et. al., v. North Carolina Department of Health and Human Services, Division of Medical Assistance*, 2008 N.C. App. LEXIS 91, *10 (Wynn, J. Dissenting).

109. Examples of similar models for such systems of apportionment have been used in both Minnesota and Wisconsin. See *Henning v. Wineman*, 306 N.W.2d 550, 551 (Minn. 1981) (holding that the district court has the jurisdiction to allocate the proceeds of a third party settlement between amounts recoverable under workers' compensation and amounts not so recoverable); See also *Rimes v. State Farm Mut. Ins. Co.*, 316 N.W.2d 348, 356 (Wis. 1982) (holding that the trial court was not in error when it determined what sum would have made the plaintiffs whole).

110. Discussion, *supra* note 106.



CONCLUSION

With a clear voice, the U.S. Supreme Court has spoken as to the way it expects the states to interpret the federal Medicaid statutes. The North Carolina General Assembly and the North Carolina Supreme Court's failure to adhere to the *Ahlborn* decision has clouded the interpretation of Medicaid statutes in North Carolina, and will only injure those indigents that Medicaid was designed to aid. To prevent further injury, and to fulfill the obligation of the state to abide by the federal statutory scheme, the North Carolina General Assembly must amend the current statutes which govern North Carolina Medicaid, and the North Carolina court system must enforce these amended statutes in accord with the *Ahlborn* decision. The aforementioned proposed solutions are both practical and feasible and would result in North Carolina finally fulfilling its obligation to operate Medicaid within the guidelines of the federal statutes.

Allen N. Trask, III

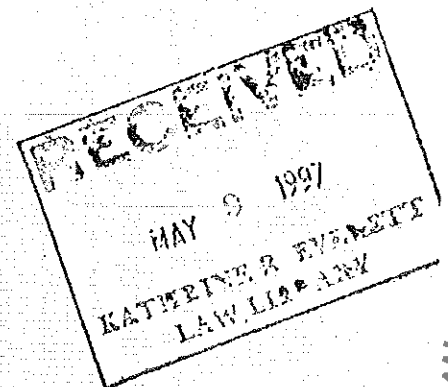
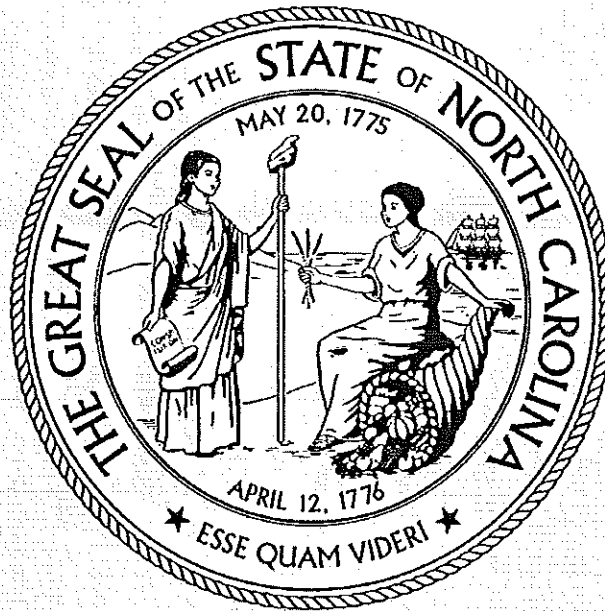


1995-96

LEGISLATIVE COMMISSIONS

NON-STANDING COMMITTEES

INTERIM STUDIES



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February 28, 1997

MEMORANDUM

TO: Members of the General Assembly

FROM: Terrence D. Sullivan, Director of Research *T.D.S.*

RE: Legislative Commissions, Non-Standing Legislative Committees and Interim Studies

This document contains a listing of all permanent legislative commissions and non-standing committees and all studies authorized or directed to be undertaken by the 1995 General Assembly. Ms. Sue Floyd and Ms. DeAnne Mangum of this Division, working with other legislative staff and executive branch employees, compiled this publication.

The listing of studies includes not only studies undertaken by legislative bodies, but also those directed to be undertaken by other agencies of State government. The information contained within this publication is arranged alphabetically by subject matter. The publication includes an alphabetical table of contents at the front and an alphabetical index at the end.

Each listing contains:

1. References to the legal authority of the commission, committee, or study;
2. If a commission or committee, the membership appointed prior to February 1997, and staff with their names, addresses and telephone numbers;
3. If a study, who or what is to make the report and when it is to be made and to whom; and
4. If a study by a State agency, the contact person.

For a membership of other existing permanent executive and judicial agencies, please contact Ms. Cathy Martin, our Legislative Librarian, at (919) 733-9390 or Mr. Stephen Bryant, the Governor's Director of Boards and Commissions, at (919) 715-0966.

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Subject: MEDICAID SUBROGATION
Authority: SL95-18, 1996 Second Extra Session, Sec. 24.1(b) and (c), HB 53
Report by: Legislative Research Commission
Report to: General Assembly
Date: 1997 Session

Subject: MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND
SUBSTANCE ABUSE SERVICES, LEGISLATIVE STUDY
COMMISSION ON
Authority: SL95-18, 1996 Second Extra Session, Sec. 24.8, HB 53
Report by: Legislative Study Commission on Mental Health, Developmental
Disabilities, and Substance Abuse Services
Report to: General Assembly
Date: Within one week of the convening of every regular session



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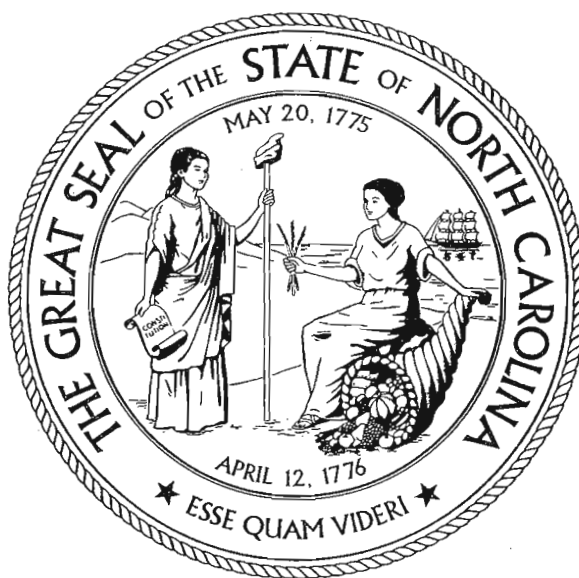


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LEGISLATIVE RESEARCH

COMMISSION ACTIVITIES

1995-96 BIENNIUM



SUMMARIES

REPORT TO THE 1997 GENERAL ASSEMBLY OF NORTH CAROLINA 1997 SESSION



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- 1 Referred to the NC Study Commission on Aging by the LRC.
- 2 Referred to the Environmental Review Commission by the LRC.
- 3 Incorporated in SL95-507, Sec 23.25(d), and referred to the Commission on the Family by the LRC.
- 4 Referred to the Commission on the Family by the LRC.
- 5 Referred to the NC Health Care Reform Commission.
- 6 Referred to the Legislative Committee on New Licensing Boards by the LRC.
- 7 Referred to the School Capital Construction Study Commission by the LRC.
- 8 Incorporated in SL95-324, Sec 8.2, HB 229 and referred to the Joint Legislative Transportation Oversight Committee by the LRC.
- 9 Referred to the Welfare Reform Study Commission by the LRC.
- 10 Incorporated in SL95-491, SB 1049.
- 11 Incorporated in SL95-324, Sec 21.12, HB 119)
- 12 Incorporated in SL95-507, Sec 7.21(m), HB 230.
- 13 Incorporated in SL95-542, Part XXI, HB 898; SL95-324, Sec 8.3, HB 229; and SL95-507, Sec 7.29, HB 230.
- 14 Incorporated in SL95-1 (1996 First Extra Session), Sec 5, SB 2.
- 15 Study not funded by the LRC.
- 16 LRC Committee on Reorganization of the Department of Environment, Health and Natural Resources (DEHNR) authorized and funded. No appointments were made.



SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION



1995 GENERAL ASSEMBLY

1996 REGULAR SESSION

1996 FIRST EXTRA SESSION

1996 SECOND EXTRA SESSION

**RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
SEPTEMBER, 1996**



September, 1996

To the Members of the General Assembly:


This document contains summaries of substantive legislation enacted by the General Assembly during the 1996 First Extra Session, the 1996 Regular Session and the 1996 Second Extra Session. Significant appropriations related to the substantive legislation are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent and agency studies created or authorized during the 1996 sessions. Two types of indices are included at the end of the document. The first index lists the session law chapter of the ratified legislation in numerical order with its corresponding page number. The second index lists the original bill number of the ratified legislation in numerical order with its corresponding page number. The ratified House bills index begins on page 125 and the ratified Senate bills index begins on page 128. *Legislation enacted during the 1996 Regular Session, the 1996 First Extra Session and the 1996 Second Extra Session are indexed separately.*

This document is the result of a combined effort by the following alphabetical listing of staff members of the Research Division: Linda Attarian, Cynthia Avrette, Brenda Carter, Donna Carter, Karen Cochrane-Brown, Sherri Evans-Stanton, Sue Floyd, Carol Fowler, Bill Gilkeson, George Givens, Kory Goldsmith, Susan Hayes, Tim Hovis, Jeff Hudson, Carolyn Johnson, Robin Johnson, Linwood Jones, Sara Kamprath, DeAnne Mangum, Lynn Marshbanks, Giles Perry, Walker Reagan, Barbara Riley, Steven Rose, Terry Sullivan, Sandra Timmons, Jim Watts, and John Young. Tim Hovis of the Research Division served as editor of this document. Also contributing were Martha Harris of the Bill Drafting Division and Sabra Faires of the Fiscal Research Division. The specific staff members contributing to each subject area are listed directly below the main heading for each area. If you would like further information regarding any legislation in the various summaries, please contact the Research Division Office at (919) 733-2578.

It is hoped that this document will provide a useful source of information for the members of the General Assembly and the public in North Carolina.

Yours truly,


Terrence D. Sullivan
Director of Research

Summaries/Substantive Legislation/Transmittal Letter





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County commissioners who are authorized to make appointments to the area board are required to declare the office of a board member who does not attend three scheduled meetings without justifiable excuse with a 12-month period as vacant.

The composition of the area board is changed to decrease from two to one physician. That physician must have been certified as having completed a residency in psychiatry. The board shall also include a member who has experience in finance and can understand and interpret audits and other financial reports. The board is required to establish a finance committee that must meet at least six times per year to review the financial strength of the area program.

The Secretary of the Department of Human Resources may withhold funding for particular service or services, assume financial control, and assume control of the delivery of services if it is determined that an area authority is not providing minimally adequate services, in accordance with its annual plan. The area authority must be provided with written notification and an opportunity to be heard before the Secretary may exercise this authority. Further, the Secretary is authorized to appoint a caretaker administrator, a caretaker board of directors, or both when it is determined that an area authority has not complied with a corrective plan developed in response to the assumption of control of service delivery by the Department. The Secretary must first provide written notification to the area board before the Secretary may make such appointments.

The Department of Human Resources must absorb any reductions in fiscal year 1995-96 appropriations as a result of reductions in Social Services Block Grant federal funds. Effective October 1, 1996.

→ **Medicaid Changes** (Chapter 18, Sec. 24; HB 53, Sec. 24; Second Extra Session 1996): Section 24 of Chapter 18 of the Second Extra Session amends section 23.14 of Chapter 324, 1995 Session Laws by adding new provisions authorizing the Division of Medical Assistance, Division of Human Resources to 1) provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of such funds; 2) use federal funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing; 3) adopt temporary rules to administer Medicaid estate recovery as mandated by the Omnibus Budget Reconciliation Act of 1993; 4) adopt temporary rules if necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse; and 5) to allow Medicaid payments for physical therapy and speech therapy to be made to qualified providers of such services rather than only to the Children's Special Health Services program.

NonMedicaid Reimbursement Changes (Chapter 18, Sec. 24.1; HB 53, Sec. 24.1; Second Extra Session 1996): Section 24.1 of Chapter 18 of the Second Extra Session changes the name of what was previously known as the "Clozaril Program" in the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to the "Atypical Antipsychotic Medication Program" and makes a technical change in the annual income eligibility standards for those enrollees in the program who are gainfully employed.

Medicaid Subrogation Change/LRC Study (Chapter 18, Sec. 24.2; HB 53, Sec. 24.2; Second Extra Session 1996): Section 24.2 of Chapter 18 of the Second Extra Session amends G.S. 108A-57 by deleting all references to payment of fees for an attorney retained by a beneficiary of medical assistance benefits, including the right of an attorney to keep up to one third of any amount obtained on behalf of a beneficiary in a claim against a third party by reason of injury or death. The prior version of G.S.

108A-57 allowed an attorney's fee up to one-third of the amount obtained or recovered, payable according to an approved schedule. The attorney's fee had priority over payment to the Department of Human Resources to recover the amount of assistance paid by the Department on behalf of or to the beneficiary. The amended statute reverses this order of priority and requires the attorney to distribute, out of the proceeds obtained or recovered on behalf of the beneficiary, the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount obtained or recovered, but this amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered. The legislation became effective July 1, 1996, and applies to claims filed on or after August 15, 1996.

Thomas S. (Chapter 18, Sec. 24.4; HB 53, Sec. 24.4; Second Extra Session 1996): Section 24.4 of Chapter 18 of the Second Extra Session amends Section 23.21 of Chapter 321 of the 1995 Session Laws by adding a new subsection allowing Thomas S. funds to be expended to support services for Thomas S. Class members in adult care homes when the service needs of individual Class members in these homes cannot be met via the established maximum adult care home rate.

Section 23.21 of Chapter 321 of the 1995 Session Laws currently requires the Department of Human Resources to make an annual report the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. Section 24.4 of Chapter 18 of the Second Extra Session amends the reporting requirements and adds a provision that requires DHR to include in the report the number of all individuals identified as prospective Class members. No longer is DHR required to include the number of prospective Class members evaluated and the number of prospective Class members awaiting evaluation in the report.

Carolina Alternatives Expansion Limits (Chapter 18, Sec. 24.10; HB 53, Sec. 24.10; Second Extra Session 1996): Section 24.10 of Chapter 18 of the Second Extra Session directs the Department of Human Resources to move forward with the expansion of the Carolina Alternatives Child and Adult Waiver Pilot Program, providing that prior to the implementation of any addition covered population during fiscal year 1996-1997, the Department comply with the following requirements: 1) receive approval from the Health Care Financing Administration; 2) make a determination that each area authority wishing to participate in the pilot program has the capacity to implement the waiver; 3) ensure that the expansion is budget neutral; 4) arrive at a determination that the capitation rates are adequate to provide appropriate services; 5) develop five-year cost estimates; 6) prepare a summary of complaints received concerning Carolina Alternatives during 1996; and 7) submit a report to the 1997 General Assembly and the Fiscal Research Division on items 3-6 above.

Clinical Social Worker Exemption (Chapter 18, Sec. 24.11; HB 53, Sec. 24.11; Second Extra Session 1996): The 1991 General Assembly passed an act that required mandatory certification of clinical social workers by the North Carolina Certification Board for Social Work. The act granted an exemption from certification until January 1, 1997 to clinical social workers who worked for the State, a political subdivision of the State, or a local government. Section 24.11 of Chapter 18 of the Second Extra Session extends the exemption from certification for clinical social workers who work for the State, a political subdivision of the State, or a local government until January 1, 1999.

Foster Care Reporting Repealed (Chapter 18, Sec. 24.12; HB 53, Sec. 24.12; Second Extra Session 1996): Section 23.22 of Chapter 324 of the 1995 Session Laws required



Finance Agency in consultation with the Department of Human Resources shall include the following: (1)maximum loan amounts; (2)interest rates from 3% to 6% for a period not to exceed 20 years; (3)documentary verification of reasonable costs for the systems; (4) loan approval priority criteria that considers the frailty levels; and (5)acceleration of a loan when statutory fire protection requirements are not met.

Child Day Care Subsidies (Chapter 18, Sec. 24.26C; HB 53, Sec. 24.26C; Second Extra Session 1996): See **CHILDREN AND FAMILIES**.

Early Childhood Initiatives (Chapter 18, Sec. 24.29; HB 53, Sec. 24.29; Second Extra Session 1996): See **CHILDREN AND FAMILIES**.

AFDC Fraud Control Program (Chapter 18, Sec 24.30; HB 53, Sec. 24.30; Second Extra Session 1996): See **CHILDREN AND FAMILIES**,

Food Stamp Felony and Fraud (Chapter 18, Sec.24.31; HB 53, Sec. 24.31; Second Extra Session 1996): See **CRIMINAL LAW AND PROCEDURE**.

STUDIES

Legislative Research Commission Studies

→ The **Legislative Research Commission** may study issues related to the **Medicaid subrogation** statute, G.S. 108A-57, including State compliance with federal law as it relates to recovery of Medicaid expenditures, the appropriate amount of attorneys' fees and costs the State should pay for recovery of Medicaid expenditures, and the appropriate amount that should be guaranteed to the client for whom the underlying action is brought. The Commission may report to the 1997 General Assembly. (Chapter 18, Sec. 24.1(b) and (c); HB53, Sec. 24.21(b) and (c); Second Extra Session 1996)

The **Studies Act of 1996** (Chapter 17; SB 46; Second Extra Session 1996) authorizes the **Legislative Research Commission** to study the following:

1. **Liability for county departments of social services/negligence; and**
2. **Related and vital issues of education and placement in the training schools run by the Department of Human Resources, Division of Youth Services, in order to determine how to ensure that education and placement are adequate and appropriate for all training school students, including Willie M. students**

Independent Studies, Boards, Etc., Created, Continued or Abolished

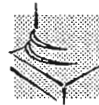
North Carolina Study Commission on Aging, Long-Term Care Subcommittee (Chapter 583; SB 126; Regular Session 1996): The NC Study Commission on Aging may appoint a Long-Term Care Subcommittee to develop a long-term care policy for NC with the following elements:

1. Promotes elder independence, choice, and dignity.
2. Provides a seamless, uniform system of flexible and responsive services.
3. Provides single-entry access.
4. Includes a wide range of home and community-based services available to all elderly who need them but targeted primarily to the most frail, needy elderly.

A summary
of legislation
in the 1996
General Assembly
of interest
to North Carolina
public officials

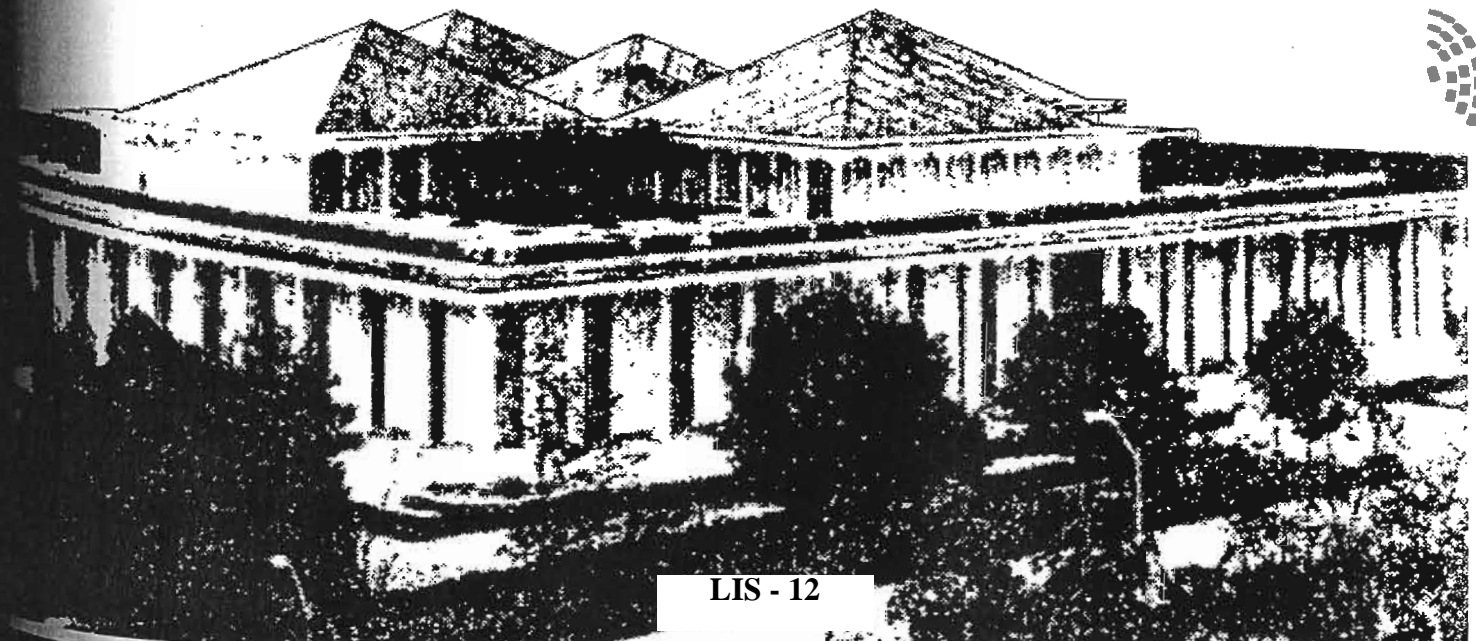
North Carolina Legislation 1996

Edited by Joseph S. Ferrell



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Appropriations Committees on Human Resources and Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to

- the effectiveness of the county's human services delivery under the consolidated system;
- the level of consumer satisfaction with consolidated human services as indicated by individuals and advocacy groups;
- the county's maintenance of efforts with respect to mental health services and other human services;
- the amount of administrative savings, if any, realized as a result of consolidation; and
- the county's success concerning reinvestment of savings, excluding administrative savings, realized as a result of the consolidation, with an estimate of the amount saved and the impact of those savings on human services programs and service delivery.

This reporting requirement expires January 1, 2001.

Liability Study

Section 2.1(e) of Chapter 17 (2nd Ex. Sess.) (S 46) authorizes the Legislative Research Commission to study issues relating to liability for county social services departments' negligence. Issues to be studied may include counties' immunity from liability; waiver of immunity through the purchase of liability insurance, including the effect of requiring the purchase of liability insurance; and state liability for county negligence. The study was prompted in part by the state supreme court's decision in *Gammons v. N.C. Department of Human Resources*,¹ in which the court held that the state could be sued under the state Tort Claims Act for a county social services department's alleged negligence in the area of child protective services. The commission may report its findings and any recommended legislation to the 1997 General Assembly.

Expenditure Models for Medicaid and Other Federal Funding

To assist in preparation of the state budget, the General Assembly uses the General Fund Financial Model and the Highway Fund Financial Model. These are computer-based financial models that project long-term expenditure and revenue trends under various simulations. Section 7.1 of Chapter 17 (2nd Ex. Sess.) (S 46) creates a special subcommittee of the Legislative Services Commission to oversee and coordinate the expansion and upgrade of these models. At the present, the models are not designed to forecast the effect on the state budget of changes in federal funding; and the General Fund model has no Medicaid component. One major objective of the study is to remedy these deficiencies.

Medicaid Task Force Continued

Section 11.1 of Chapter 17 (2nd Ex. Sess.) (S 46) extends the reporting date of the Medicaid Task Force to the 1997 General Assembly.

Medicaid Subrogation Study

Section 24.2 of Chapter 18 (2nd Ex. Sess.) (H 53) authorizes the Legislative Research Commission to study issues relating to the Medicaid subrogation statute, G.S. 108A-57. This study will address

- state compliance with federal law relating to the recovery of Medicaid expenditures;
- the appropriate amount of attorneys' fees and costs, if any, that the state should pay for the recovery of Medicaid expenditures; and
- the appropriate amount, if any, that should be guaranteed to the client for whom the underlying action is brought.

The commission may report to the 1997 General Assembly.

1. 344 N.C. 51, 472 S.E.2d 722 (1996).



Public Assistance and Social Services Programs

Medicaid Subrogation

Section 24.2 of Chapter 18 (2nd Ex. Sess.) (H 53) rewrites G.S. 108A-57, relating to subrogation rights of the state or the county providing medical assistance benefits. This statute determines the amount an attorney must distribute to DHR after obtaining for a medical assistance beneficiary a recovery from a third party because of injury or death. That amount is the amount of assistance the department paid on behalf of or to the beneficiary, as prorated with claims of others having medical subrogation rights or medical liens against the amount received or recovered, except that the amount paid to DHR may not exceed one-third of the gross amount obtained or recovered. These provisions apply to claims filed on or after August 15, 1995.

Funding Adjustments

Section 24.18 of Chapter 18 (2nd Ex. Sess.) (H 53) states that funds appropriated to DHR for 1996-97 have been reduced by \$15,252,292 in anticipation of the receipt of federal funds from the Title IV-A Emergency Assistance Program. It provides that if these federal funds are not received, or if only a portion of that amount is received, the director of the budget "may use funds available to the Department, not to exceed" the amount of the reduction. The effect of this provision is to allow DHR to make up shortfalls in anticipated federal funds with money that otherwise would revert to the General Fund at the end of the fiscal year, such as lapsed salary funds.

The section also states that funds appropriated for the Social Services Block Grant were reduced for local departments of social services for 1995-96 and 1996-97 in anticipation of the receipt of federal funds from the Title IV-A Emergency Assistance Program. It provides that if these reductions are not made up with federal funds received in 1996-97, or if only a portion is made up, the director of the budget may use funds available, not to exceed \$12,150,000, to make up the reductions for local departments of social services.

In either case, the director of the budget must report to the Joint Legislative Commission on Governmental Operations before making a budget transfer under this section.

AFDC Emergency Assistance Rules

Section 24.14 of Chapter 18 (2nd Ex. Sess.) (H 53) requires the Social Services Commission to ensure that Aid to Families with Dependent Children Emergency Assistance (AFDC-EA) cash assistance is provided only to persons with verifiable emergencies by ensuring (1) that applicants produce documented verification of the emergency for which AFDC-EA cash assistance is requested, unless it is unreasonable or not feasible to obtain written verification, in which case verification can be by telephone or other reliable means of communication, and (2) that the verified emergency is one that would threaten the health, safety, or well-being of the child or children in the applicant's care or custody.

Extension of Cabarrus County Workfare Project

The 1995 General Assembly authorized Cabarrus County to establish a "workfare" demonstration project for AFDC and food stamp recipients. Section 24.16A of Chapter 18 (2nd Ex. Sess.) (H 53) extends this pilot project until January 1, 1999 (it had been due to expire on July 1, 1997), and requires DHR to submit an evaluation report on the project to the General Assembly no later than May 1, 1998.

Child Support Lien

G.S. 44-49.1, which was enacted in 1995 and became effective July 1, 1996, provides for liens on certain insurance proceeds for payment of past-due child support obligations. Chapter 674 (H 1280) recodifies the statute as G.S. 58-3-185 and amends it to specify that liens arising under this law are subordinate to (1) liens arising under Article 9 of G.S. Chapter 44 on insurance proceeds for personal injuries to secure sums due for medical attention and (2) valid health care provider claims covered by health benefit plans (not including disability income insurance) as defined in G.S. 58-3-172.

