



Legal Issues and Workplace Policies Committee Chair George Teague, Economic Development Committee Chairman Lew Myers, Health Care Committee Chair Carla DuPuy

# Legislative Positions Recommended by NCCBI's Public Policy Committees and Approved by the Executive Committee

*as presented during the NCCBI Legislative Conference  
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## INDEX

Economic Development Committee Positions,	page 2
Education Committee Positions,	page 8
Environmental Concerns Committee Positions,	page 18
Health Care Committee Positions,	page 26
Legal Issues and Workplace Policies Committee Positions,	page 28
Tax and Fiscal Policy Committee Positions,	page 37
Transportation Committee Positions,	page 44



Tax and Fiscal Policy Committee Chair Lucius Pullen, Transportation Committee Chair Marshall Henry, Education Committee Chair Clark Plexico

# LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI ECONOMIC DEVELOPMENT COMMITTEE

## COMMUNITY COLLEGE ECONOMIC DEVELOPMENT PROGRAMS

**POSITION:** NCCBI recognizes the integral role community colleges play in North Carolina's economic development, and supports new funding to enhance community college economic and workforce development programs.

**EXPLANATION:** Since its inception, the North Carolina Community College System has recognized support for business and industry and statewide economic development as being at the core of its mission. North Carolina's community colleges are recognized as national leaders in economic and workforce development, but their preeminent role is threatened by program funding levels that have not kept pace with the growth of the state, nor kept pace with similar investments made by other states. NCCBI supports community college expansion requests to enhance economic development including:

### 1) Extension of the Reallocation of Unemployment Insurance Funds for Equipment Needs

In recent years, North Carolina community colleges have fallen significantly behind in providing the equipment needed to train workers for current industry demands and in funding levels for customized training programs (i.e. New and Expanding Industry Training) relative to other states in the Southeast. In 1999, NCCBI supported the reallocation of a portion of funds from the Unemployment Insurance Trust Fund to the Department of Community Colleges for a period of two years to assist with equipment needs. This reallocation of funds is scheduled to sunset at the end of 2001. Continued funding for equipment is crucial to ensure that community colleges are able to keep pace with current industry trends and that funding for North Carolina's nationally recognized customized training program is at least equivalent to that of neighboring states. Therefore, NCCBI recommends that the General Assembly look closely at the status of the Unemployment Insurance Trust Fund and the projections on that fund based on current law and economic conditions. If the transfer of these funds can be handled without an adverse effect on the trust fund and without an increase in the amount that employers will be required to contribute to the fund, NCCBI supports extending by two years the reallocation of these funds to the Department of Community Colleges.

### 2) Occupational Continuing Education

Twice in the past four years, the General Assembly has provided additional funding to support lifelong learning opportunities that are responsive to job market demands. NCCBI supports an additional expansion of the occupational continuing education program of \$12,913,701. This expansion will enable community colleges to be more responsive to business and industry training needs by providing continuing education funding that is equivalent to curriculum programs, and by providing the funding necessary to recruit instructors that can provide the sophisticated high-tech skills training increasingly required by North Carolina's businesses and industries.

### 3) Small Business and Focused Industrial Training Centers

Approximately 97 percent of North Carolina companies are small businesses with less than 100 employees. Many small businesses in North Carolina have started with training and counseling assistance from community college Small Business Centers. All 58 community college Small Business Centers are funded at the same funding level, approximately \$63,000 per center, which is barely adequate for even the smallest college service areas. NCCBI supports the community college request for an additional \$2 million in funding for the Small Business Center Network, that will provide supplemental Small Business Center funding to all community colleges in the state based on a formula that takes into account service area size, economic prosperity, along with center productivity.

In addition, NCCBI supports the recommendation of the Rural Prosperity Task Force to increase funding for the Focused Industrial Training (FIT) program by \$1 million. This increase will support the eighteen most rural

colleges that currently do not have FIT Centers, and therefore do not have dedicated customized training staff to support manufacturing modernization and economic development efforts in the most rural areas of our state.

#### 4) Enrollment Increases/Distance Learning/Summer Funding

Keeping the “open doors” of North Carolina’s community colleges open to all of North Carolina’s citizens throughout the year will require additional funding to support anticipated enrollment increases, and new funding to enable students to enroll at community colleges during the summer and to take courses by way of technologies that enable distance learning such as the Internet. NCCBI supports the North Carolina Community College System’s expansion request of \$44,181,928 to meet anticipated student enrollment increases and provide for summer term funding and distance learning.

### **COMMUNITY COLLEGE ECONOMIC DEVELOPMENT PROPOSALS FOR A LIMITED WAIVER OF THE UMSTEAD ACT AND HIGH DEMAND OCCUPATION SCHOLARSHIPS**

**POSITION:** NCCBI supports legislation to waive the provisions of the Umstead Act to enable North Carolina community colleges to provide enhanced support to business and industry and rural economic development by providing on community college campuses: 1) information technology telecommuting sites; 2) small business incubators; and 3) product testing services for North Carolina industries. These services will be provided in association with training and education provided by the community colleges. In addition, NCCBI supports a special provision to enable community colleges to use financial scholarship funds as an incentive to recruit students into training programs for high demand occupations.

**EXPLANATION:** Government officials and business leaders are looking to community colleges to train more workers for high demand occupations, to help bridge the digital divide by providing telecommuting work stations for IT professionals in rural areas, to support small business development with on-campus incubators linked to Small Business Center programs, and to locally provide product testing services that support North Carolina industries utilizing college faculty and equipment. To provide these types of limited but important services that enhance local economic development, NCCBI recommends that the General Assembly approve two changes to the current law:

#### 1) Limited Waiver of the Umstead Act

The first legislative proposal would be similar to that passed in the 2000 legislative session on behalf of the University System that provides a waiver to the Umstead Act. The community college waiver would be for the limited purposes of providing on-campus information technology telecommuting sites, small business incubators, and to provide product-testing services for North Carolina industries. Specifically, NCCBI recommends that the General Assembly amend G.S. 66-58 to exempt community colleges from the prohibition against allowing private businesses to use public buildings to conduct business operations, and amend Chapter 115D of the General Statutes to allow businesses to provide these limited services on college campuses.

#### 2) High Demand Occupation Scholarships

In both 1999-2000 and 2000-2001, \$5,000,000 was appropriated by the legislature to provide a financial need-based student assistance program (General Assembly of North Carolina, Session 1999, Section 9.4(a.)) It is proposed that \$500,000 of this existing scholarship fund be designated as incentive funds to recruit trainees in high demand occupations. The program would require no additional funds beyond those already appropriated.

Each community college could access these funds based on a formula in keeping with their current FTE count. The funds could be used as scholarships for tuition, fees and books for students willing to train in high demand occupations as recommended by each college and approved by the State Board of Community Colleges. These funds could be used for degree, diploma, certificate or occupational skill courses with a special emphasis on short-term programs leading directly to employment.

## **NORTH CAROLINA STATE PORTS**

**POSITION:** NCCBI encourages the North Carolina legislature to appropriate funds on an ongoing basis to the North Carolina State Ports Authority sufficient to maintain and improve the Ports' marine terminals and related infrastructure.

We recommend that the Legislature appropriate the State's share of the funding as required for the federal navigation improvement project that would deepen the Cape Fear River navigation channel. Deepening the Cape Fear is essential for the Port of Wilmington to remain competitive and serve North Carolina's business and industry into the next century. We further recommend that highway projects necessary for improved access to both State Ports be identified, included in the State's Transportation Improvement Program (TIP), and assigned the highest priority for implementation. NCCBI recommends the removal of the Sunset Clause of the North Carolina State Ports Tax Credit Legislation that is due to expire February, 2001.

**EXPLANATION:** North Carolinians are just beginning to realize the tremendous potential of our State Ports to access global markets and foster economic development throughout North Carolina. The strategic location of our Ports at Morehead City and Wilmington allows North Carolina business and industry to better compete in the global marketplace through savings on inland transportation costs. For example, North Carolina customers shipping containerized cargoes accrue an estimated \$19 million in savings on inland transportation annually by using the Port of Wilmington, instead of other gateways. The construction activity of Cape Fear River Deepening Project was begun on November 6, 2000. The project will be complete by the first quarter of 2003 - a timetable that is critical to steamship lines serving North Carolina's importers and exporters from the Port of Wilmington.

The Ports Authority's reinvigorated partnership with the State has resulted in nearly \$44 million in appropriations for the last 7 years. Most of this money has gone for major maintenance projects (58%) with the balance used for new capital projects. These appropriations have yielded substantial benefits in the ability of North Carolina's ports to better serve our State's business and industry. However, just as at ports throughout the country, the huge economic returns from the operations of our ports require continued investment for its realization. The Ports Authority's defined six-year program based on this revitalized partnership has been submitted to the State along with its 2000/2001 Biennium Budget request to continue State capital contributions for new construction projects and repairs and renovations (R&R) projects. It should be noted that new capital construction will be joint ventured with private sector interest whenever possible.

The North Carolina State Ports Tax Credit has been a strong tool to increase awareness of the importance of North Carolina's ports to business and industry in the state. Since its inception in 1992, 77 companies have received certification for a total of \$5,476,000 in credits for cargo movements. This \$5.47 million in tax credit is related to \$4.605 million dollars, and 1,853,855 tons of cargo generated as a result of business moving increased volumes of cargo through our ports, incited by the tax credit. The State Ports Tax Credit allows taxpaying importers and exporters to take credit against incremental increases based on a running 3 year average of movements through North Carolina's Ports. Therefore, it encourages both increased volume movements and new business through our terminals. This additional tonnage resulted in "direct" economic impact of \$46.363 million in state and local taxes, and 10,500 jobs. Adding indirect and induced factors, the results are \$86.9 million in taxes generated and 23,652 jobs. (source: Dr. Gary Shoesmith, Wake Forest University)

## **SUPPORT FOR IMPROVED WATER AND SEWER SERVICE**

**POSITION:** NCCBI encourages the General Assembly to support increased funding for improvements to water and sewer systems across the state to keep the state competitive for economic development. Specifically, during the long session of the 2001-2002 General Assembly, members should assess the impact of the 1998 bond issue (which was intended to address critical water and sewer needs through the year 2002) and report back to the short session on the merits of asking citizens to vote on an additional bond on the 2002 ballot or establish a dedicated source of funding for these critical needs.

**EXPLANATION:** Voters across North Carolina recognized the critical deficit in water and sewer infrastructure

in 1998 by approving the Critical Needs Bond Act, which provided some funding to address the state's needs. This was an important first step, but a comprehensive assessment by the N.C. Rural Economic Development Center has found that there are currently \$7 billion in unmet water and sewer needs in urban areas and \$4.3 billion in unmet needs in rural areas. These needs include deteriorating lines, inflow and infiltration of sewer systems and a lack of excess plant capacity to meet state requirements or permit planning for growth.

Specifically, the survey conducted by the N.C. Rural Economic Development Center found that more than 50% of the state's water systems are more than 40 years old; only 6% have made major line repairs since the original installation; 75% of those surveyed have no excess capacity to handle additional water needs; and more than 72% of those surveyed have no excess sewer capacity. The lack of capacity translates into major trouble for economic developers – you can't bring in new business, build existing businesses or accept new citizens if you lack additional ability to provide additional water and sewer.

The challenge is particularly tough for small and rural communities. In order to meet the demands of a rapidly changing economic and regulatory environment, small communities need assistance in planning for their water and sewer infrastructure needs. These communities need a new source of funding.

## **WORKFORCE PREPAREDNESS**

**POSITION:** NCCBI supports the advancement of career focused preparation for youth in a system of School-to-Work transition and Tech Prep programs. NCCBI also promotes the retraining of adults in the critical skills needed to compete in the global marketplace, and encourages incentives for employers to initiate programs in workforce development.

**EXPLANATION:** For a competent workforce, people must possess skills such as critical thinking, teamwork, and adaptability as well as knowledge of advanced technological concepts. Workers also need strong basic skills in math, science, and communication. Schools must integrate vocational programs with traditional academic courses. Scholastic preparation should incorporate career-focused concepts so that college-bound and work-bound students have adequate preparation for employment. Career pathway requirements in both occupational and academic courses must be rigorous; courses designed for college-bound students must include more employment-focused, hands-on activities. Tech prep, apprenticeships, mentoring experiences, job shadowing and other school-based and work-based experiences must increase. Only through a concerted effort to foster connections between the classroom and the workplace can North Carolina compete with the many nations that have implemented this approach.

Strengthened coordination between community colleges, public schools and the university system will result in successful training programs. The JobReady, School-to-Work initiative that brings public schools, community colleges and business/industry together in partnerships must be promoted and sustained. Tax credits and other incentives will cause more businesses to offer apprenticeships and internships, which have already proven their worth through greater academic achievement by students and greater satisfaction by students and employers.

All students in North Carolina should have clear career pathways through high school and beyond, with the confidence that their education is sturdy and flexible enough to prepare them for the changing and competitive world of work.

## **SUPPORT FOR ECONOMIC DEVELOPMENT AND EXPANSION INCENTIVES**

**POSITION:** The North Carolina General Assembly should give continued priority to keeping the state competitive in terms of economic development and recruitment. Cost-efficient and competitive tax, financial, energy and infrastructure incentives should be a viable tool when encouraging companies to relocate here or to assist existing companies in their in-state expansion efforts, especially in those of areas of the state where economic growth has lagged behind other parts of North Carolina. Special consideration should be given by Commerce officials to maintaining a balance between existing and new industry when utilizing economic

development incentives. The Legislature should also increase the amount of funding for the Industrial Recruitment Competitive Fund for new or expanded businesses and industries as the current \$2 million fund has proven to be insufficient.

**EXPLANATION:** The N.C. General Assembly enacted the Economic Opportunity Act of 1998, providing a combination of tax and financial incentives to companies making a significant investment in North Carolina. In addition, the Economic Opportunity Act provides a tax credit to existing businesses that create jobs in “blighted urban areas”, defined as zones where 20 percent or more of the residents have incomes below the poverty level. Approximately fifty (50) N.C. cities include zones that qualify under these criteria.

North Carolina has been a national leader in economic development announcements for past decade. In recent years, our state has lost several high-profile industrial recruitment battles because other states offered more competitive incentives.

The incentives utilized by the state in the recruitment of high value companies are worthy examples where the economic benefits derived by the state and its citizens clearly outweighed any potential cost to the state while keeping North Carolina attractive and viable in a highly-competitive economic development environment.

### **SUPPORT FOR THE STATE’S SEVEN REGIONAL PARTNERSHIPS AND THE N.C. DEPARTMENT OF COMMERCE**

**POSITION:** NCCBI supports continued increases in General Assembly funding for the state’s seven regional partnerships and the North Carolina Department of Commerce and for a prominent role for regional approaches in economic development across the state.

**EXPLANATION:** It is important to maintain a strong identifiable state brand through the Department of Commerce in addition to flexible regional solutions. Since 1994, each of the state’s 100 counties has belonged to one of North Carolina’s seven regional economic development organizations, which are public-private partnerships that receive annual appropriations from the North Carolina General Assembly in addition to funds raised from private and other public sources. Continued state support for these partnerships and the Department of Commerce is critical to North Carolina’s near and long term competitiveness. Regionalism is particularly beneficial to rural counties, most of which are unable to, on their own, fund economic development programs that can achieve comparable results given today’s global, information age economy. By functioning as regional teams, urban and rural counties can build synergies, present a unified marketing image and customize economic development solutions that fit their region’s unique needs and resources. Such solutions may include recruitment of small, medium or large economic development projects, cultivation of sophisticated tourism programs, film promotion and retiree recruitment. Their efforts also ensure product-related needs are met, including infrastructure and workforce development.

The seven regional partnerships and the Department of Commerce each have proven track records, lean administrative operations, grass-roots governing bodies and strong collaborative relationships with private-sector leaders and economic development officials working at the state and local levels.

North Carolina is the only state in the nation to have legislatively mandated economic development regions, ensuring that even its poorest and most remote communities have a genuine shot at prosperity in the 21<sup>st</sup> century. The regional and state programs have shown themselves worthy of increased annual funding from the General Assembly.

### **SUPPORT FOR TRAVEL AND TOURISM**

**POSITION:** The North Carolina General Assembly should give higher priority than in the past to appropriations for promotion and development of the state’s travel and tourism industry. Specifically, serious consideration should be given to the goals of the North Carolina Board of Travel and Tourism, and its budget expansion initiatives.

**EXPLANATION:** Travel and tourism is the nation's largest services export industry, third largest retail sales industry and one of America's largest employers. It is in fact the first, second or third largest employer in 29 U.S. states. In 1999, the U.S. travel industry received more than \$541 billion, including international passenger fares, from domestic and international travelers. These travel expenditures, in turn, generated 7.8 million jobs for Americans, with over \$157 billion in payroll income. Approximately 1 out of every 17 U.S. residents was employed due to direct travel spending in the U.S. during 1999.

In North Carolina, last year 44.5 million visitors generated nearly \$12 billion in expenditures across the state, making tourism one of North Carolina's most lucrative industries.

According to the Travel Industry Association (TIA), the average state tourism office budget for 99-00, was \$12.8 million. Last year, North Carolina ranked 23<sup>rd</sup>, with a projected total budget of \$10.6 million. Our major competing states were considerably more supportive in promoting this industry. South Carolina's projected budget was \$13.5 million, Tennessee's projected budget was \$12 million and Virginia's projected budget was \$19.2 million.

Among the 50 states, the average state domestic advertising budget was just under \$3.4 million. North Carolina ranked 17<sup>th</sup> with a budget of \$3.4 million. There has been no increase in the advertising budget over the last three fiscal years. In an inflationary media environment, a flat budget is actually a declining budget in terms of buying power. The 1999-2000 budget was nine percent lower in buying power than it was just three years ago.

Despite being outspent by competing states, direct domestic traveler spending was up nearly six percent across the state over 1998. Travel expenditures occur throughout all one hundred counties in North Carolina. Direct domestic travel expenditures generated almost \$643 million in tax revenue for the state treasury and over \$393 million tax revenue for local governments in 1999. In order to continue growth and develop North Carolina's full potential, the Division's budget needs to keep pace with the competition.

## Speakers at the NCCBI Legislative Conference



House Speaker Jim Black



Senate Minority Leader Patrick Ballantine



Senate President Pro Tem Marc Basnight

## LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI EDUCATION COMMITTEE

### STAY THE COURSE

**POSITION:** NCCBI recommends that the General Assembly and the State Board of Education “stay the course” on the following initiatives: ABC’s, Excellent Schools Act, JobReady (School-To-Work), and Standards and Accountability.

**EXPLANATION:** North Carolina was identified as one of two pace-setter states in the public school standards and accountability movement at the 1999 National Education Summit, and our students have been making strong progress on the National Assessment of Educational Progress, the SAT and on the state’s end-of-grade and end-of-course tests.

NCCBI recommends that ALL policy makers exercise patience, while simultaneously expecting improvements from these initiatives, until adequate experience and data is obtained to effectively judge the necessary adjustments that might be necessary or desired.

As to the specific initiatives:

**ABC’s:** The ABC’s Plus is North Carolina’s Strategic Plan for Excellent Schools. The plan calls for a system that will be customer-driven with local flexibility to achieve mastery of core skills with high levels of accountability in areas of student achievement. It includes five priorities: High Student Performance; Safe, Orderly and Caring Schools; Quality Teachers, Administrators and Staff; Strong Family, Community and Business Support; and Effective and Efficient Operations.

**Excellent Schools Act:** Sustained funding of this commitment will be critical to achieving the National Standards, as well as the promises, inherent in the original legislation. With teachers’ salaries moving from 43<sup>rd</sup> several years ago to the national average, continued financial support will be necessary to keep North Carolina at or preferably above the national average.

**First in America by 2010:** NCCBI supports the following goals of the First in America initiative: High Student Performance; Every Child Ready to Learn; Safe, Orderly and Caring Schools; Quality Teachers and Administrators; and Strong Family, Community and Business Support.

**JobReady:** The opportunities inherent in this program include collaborations between the public schools, community colleges, the university system and the business community. There are further strong linkages between the Standards and Accountability Commission’s recommendations, the ABC’s for the high schools, Tech Prep, the remediation requirements at the community colleges and higher ed as well as the feedback from the business community as to the deficiencies of their entry level job applicants.

**Standards and Accountability:** North Carolina public school students are required to meet statewide standards for promotion from grades 3, 5 and 8 and high school graduation. The standards, also known as gateways, will ensure that students are working at grade level in reading, writing and mathematics before being promoted to the next grade. For high school graduation, students will need a passing score on an exit exam of essential skills and a computer competency test.

### TEACHER RECRUITMENT AND RETENTION

**POSITION:** In order to assure high and improving levels of student achievement, NCCBI supports creative efforts to recruit and retain high quality teachers, including substitutes, in the public school systems. We support the continuing use of lateral entry teachers into the profession as long as standards for such entry remain high. We also support efforts to supply teachers with the resources necessary to make the school environment safe for teaching and learning.



**EXPLANATION:** For the foreseeable future, North Carolina will need to recruit an estimated 9,000 teachers per year. The reasons for this increased demand for teachers includes 1) school growth, 2) the number of teachers retiring each year, 3) the number of teachers leaving the profession for other career fields or to raise their own children, and 4) lower class size.

With this demand for teachers comes many challenges for the state and for local school systems. In 1998, the North Carolina General Assembly adopted guidelines for lateral entry that retained high standards for teachers. We support the lateral entry program and encourage the state to continue to look at new ways to encourage people to choose a career in teaching without compromising the current move toward having qualified teachers in every classroom.

Although pay has been an issue raised by some, the Excellent Schools Act provides for a pay increase schedule that brings teachers' salaries up to the national average. We support continuing this plan for salary increases. Additionally, some local school systems are providing their own incentives to recruit teachers to systems that are facing particular difficulties in finding enough classroom teachers and teachers for areas of instruction that are becoming more difficult to find like math, science and special education. We applaud these efforts and encourage local flexibility in this area.

Additionally, the state should examine how we can "grow our own" next generation of teachers. Beyond the Teaching Fellows and Prospective Teachers Scholarships, attention should be given to programs like training teacher assistants to become teachers, and creating a statewide teacher cadet program in our high schools, and possibly our middle schools, that will begin developing potential teachers in much the same way we use tech prep courses and apprenticeships to develop other careers. Other programs such as Project TEACH, the Model Teacher Consortium, and the NC Center for the Advancement of Teaching should be reviewed with regard to their positive impact on promoting people to enter and remain in the field, and any additional needs and/or programs which will promote that goal should be identified and implemented.

A related issue has been the employment and retention of qualified and skilled substitutes, without whom achievement will suffer. The 1998 General Assembly took a commendable step toward addressing the problem by increasing substitute teacher minimum salaries to 65% and 50% of the beginning teacher salary for licensed and non-licensed substitutes respectively. The General Assembly should now adopt the previous recommendation of the State Board of Education by setting the substitute rates at 75% and 60% respectively. Additionally, to assure a high level of commitment and service, any substitute who serves in the same teaching position for more than 10 student days should thenceforth be paid at the beginning teacher salary level for as long as the substitute continues that teaching assignment.

Finally, schools as a safe environment for teaching and learning continues to be a concern. All efforts should be made by parents, the community and the state to ensure that teachers and students feel safe and that teachers are not discouraged from entering the profession because of safety concerns.

## **EARLY CHILDHOOD EDUCATION AND CONTINUED SUPPORT FOR SMART START**

**POSITION:** NCCBI recommends that North Carolina assist local school districts in assuring that children enter school ready to learn. Specifically, NCCBI:

1) encourages the state to use the new knowledge we have about brain development in children from birth to 3 years to develop appropriate programs and opportunities for learning; 2) continues to support preschool programs with specific support for Smart Start; and 3) encourages schools to develop greater continuity between preschool programs and the primary grades.

**EXPLANATION:** Research has uncovered evidence about the importance of brain development in children from birth to 3 years and has documented the effectiveness of preschool programs in preparing children for the learning experiences they will encounter when they enter school. It is important that all of this information be taken into account and used appropriately as we look at opportunities for young children to learn and design programs for children to prepare them for school.

## 1. Early Brain Development

New evidence about the importance of early brain development indicates that neuro development closely parallels the development of the ability to learn and the capacity we call intelligence. Given this new knowledge, we must determine what new public policy, if any, will be effective in maximizing the potentials of children through creating environments that best nurture brain development.

While some children are living in environments that are nurturing and supportive, others are suffering from neglect and stress. Appropriate attention needs to be given to children in this age group to give them the best foundation possible for learning. Parents need informational tools on how best to effectively interact with young children to give them the best possible opportunity to learn.

As a first step in addressing the needs of children from birth to 3 years, and the issues of parental responsibility and privacy, an assessment needs to be made of state government agencies to determine what activities are being planned to use and implement the new knowledge we have about early brain development. Additionally, the Department of Public Instruction should maintain enrollment, membership and attendance data for full-day pre-kindergarten instructional programs operated in public elementary schools.

## 2. Preschool Programs and Smart Start

Research has documented the effectiveness of preschool programs and recent information in North Carolina has shown that programs such as Smart Start are making a real difference in preparing children for the learning experiences they will encounter when they enter school.

The cost of such programs is offset by savings in remedial services, absenteeism, special education services, and grade retentions, all of which are reduced by preschool programs. Research also shows that when parents are involved in their children's schools, the children achieve at higher levels. The legislature needs to maintain the progress it is making by continuing full funding for Smart Start in all 100 counties.

## 3. Continuity between preschool programs and the primary grades

Educators, the business community and the public at large have been concerned over the years about the poor performance of many North Carolina students on serious measures of achievement. Progress is being made at all levels and although we are heading in the right direction with improvement at all levels of the education continuum, we must continue to do all that we can to give every child an opportunity to learn.

Because we know that early childhood education has a profound impact on how well a child does at higher grade levels, we must continue to give attention to educational opportunities at the preschool and primary grade levels and develop continuity between the two. This early attention and intervention can enable students to take greater advantage of the instruction offered in the middle grades and high school.

## **FULL FUNDING FOR MANDATES**

**POSITION:** When mandating new programs and responsibilities for local school systems, we encourage the General Assembly not to impose these requirements without providing adequate funding resources.

**EXPLANATION:** Education is basically a state function in the United States and clearly so in North Carolina. There is a duty by the General Assembly when it mandates a program to fully fund it so it can be implemented effectively and efficiently. Unfortunately there is a tendency by legislative or other bodies to put programs, reports, or the like in place without considering or providing the resources, (e.g. impounding, maintaining and disposing of DUI vehicles; or testing coordinators to administer the state testing program at the schools). Occasionally some moneys are provided, but they are insufficient to the task (e.g. exceptional children, limited English proficiency/English as a second language, or the WISE operation at the schools).

One vivid example of a state/federal mandate without adequate financial resources is the area of educating

exceptional children. Not only are these needs underfunded generally, the state places a cap on funding which stops funding when the number of identified young people exceeds 12.5% of the average daily membership. Districts have no way to prevent such children from entering their school system. Indeed, due to a combination of the municipal overburden phenomena and exemplary exceptional children's programs, some districts have become magnets for these children. In addition, group homes meeting the needs of certain of these children have now opened in certain counties, increasing the exceptional school population even more. This area will continue to become even more demanding due to recent federal legislation and state interpretations, which will require more resources for exceptional children particularly as it relates to maintaining students in programs and safe school environments. It appears that prompt attention must be given to removing these arbitrary caps which penalize districts who must provide the services by law because the children with such needs are there.

In addressing needs and putting new programs in place and additional burdens on local school systems, the General Assembly needs to recognize when additional financial resources are needed and should not place additional burdens on local schools without providing those resources.

## **INFORMATION TECHNOLOGY**

**POSITION:** NCCBI strongly encourages the implementation of a technically sound, aggressive, sustainable and ongoing funding source for education technology that is based on the strategic direction and contemporary technical standards required of our K-12 and higher education systems.

**EXPLANATION:** While some progress has been realized over recent years, North Carolina's public education system is rapidly falling behind the current and emerging standards for information technology required for the effective and efficient operations of our classrooms and information management systems.

The needs and "mission critical" aspect of information technology has grown exponentially and without question has moved to the forefront in nearly every walk of life from private business to government, learning and teaching, to personal, professional, and organizational management.

Infrastructure, maintenance, technical support, hardware and software upgrades, and training necessitate an ongoing investment for improved productivity, accountability, and cost-effective planning. An ongoing funding source is critical in meeting the accountability expectations of our state's business, higher education, and parent community, in assuring our students are successful in school and equally important, as they transition to the workplace and throughout their continuum as life long learners.

## **SUPPORT THE UNIVERSITY OF NORTH CAROLINA**

**POSITION:** NCCBI recommends that the General Assembly support access to the University of North Carolina by fully funding the University's need-based student financial aid program and its enrollment growth, and enable the University to recruit and retain excellent faculty by providing competitive faculty compensation.

### **EXPLANATION:**

**Student Financial Aid:** Concerned about mounting indebtedness among University students and faced with growing numbers of academically qualified residents seeking a University education, the Board of Governors conducted a study of education costs, the ability of students and their parents to pay, and resources available from all sources to assist students who must have help to meet those expenses. The Board found that UNC students have higher levels of unmet financial need and higher levels of annual borrowing than students attending public four-year institutions in other low-tuition states. The Board of Governors developed a comprehensive need based financial aid plan designed to build an existing support. Approved in Fall 1999, the plan takes into consideration the contribution students and their families can afford to make toward college expenses, student earnings during summer and academic term employment, and scholarships and grants available from all sources. After tapping those resources, in-state undergraduates and masters-level graduate students fall more than \$31 million short of meeting their education expenses each year. The General Assem-

bly and its 2000 Short Session appropriated \$5 million to begin the University's aid program, which allowed the beginning of a phased approach. Appropriating the additional funds needed – estimated at \$26 million – will extend assistance to other academically qualified, financially needy students.

**Enrollment:** The University will experience significant enrollment growth for at least another 10 years as children of the baby boomers graduate from high school and join more and more students of all ages seeking to enhance their own opportunities through education. Growth is occurring both in the number of students seeking traditional on-campus experiences and those opting for distance education alternatives. The 16 constituent institutions expect to enroll approximately 48,000 more students over the next 10 years in traditional, on-campus programs and a significant and increasing numbers in distance education programs. The General Assembly has adopted a funding policy to support such growth and it is important that it be fully funded.

**Competitive Faculties/Competitive Salaries:** In order to recruit and retain faculty who can produce the excellent graduates essential for North Carolina's continued economic and cultural growth, the 16 constituent institutions of the University must compete successfully in the nation's faculty market. The General Assembly recognized that fact when, in 1998, it directed the Board of Governors to study the salaries and other compensation of faculty at the 16 UNC campuses, compare them with their respective peer institutions, and recommend the actions necessary for the campuses to be competitive. Salaries paid UNC faculty do not compare favorably with other workers with similar education at levels nationally. MGT, a national management consulting firm engaged to conduct the study, found a \$28.5 million gap between UNC institutions and their national peers, with an additional \$13.5 million gap between certain UNC institutions and their peers in the most competitive groups. The Board of Governors has proposed a two-part plan to correct the imbalance: (1) that the General Assembly appropriate \$28.5 million to close the base salary gap and (2) that those institutions with especially competitive labor markets, including the University's research campuses (UNC Chapel Hill and NC State University), close the remaining gap through use of non-state sources (such as tuition revenue, private gifts, and endowment earnings). The General Assembly adopted a special provision in 2000 directing the Joint Legislative Education Oversight Committee to study university and community college compensation and report prior to the 2001 session.

## **SUPPORT FOR COMMUNITY COLLEGES**

**POSITION:** NCCBI supports funding from the 2001 General Assembly for the N.C. Community College system for enrollment increases; occupational continuing education; faculty salaries and professional development; and support for the entrepreneurial spirit.

### **EXPLANATION:**

**Enrollment Increases:** Community Colleges are now the model of choice for adult learners seeking workforce-related education and training. Reaching maturity after approximately forty years of service, Community Colleges are increasingly the first choice of those seeking first-time post-secondary education; those returning adults who seek training beyond the baccalaureate degree level; those adults who have not been well-served by other education models; those who return to the classroom for non-credit instruction to develop enhanced, marketable skills; and those who need to develop essential, basic skills. The reasons that make this the model of choice are straightforward: adult learners want innovative and flexible programs that will result in meaningful employment, and employers want employees who can think critically, identify and solve problems, and communicate effectively. The nexus between the needs of adults and the demands of employers are Community Colleges. In order to establish the link between adult learners seeking job skills and employers that need them, the Community College System will implement a performance-based evaluation system directly related to its educational delivery model. The performance measures which define this linkage for the 2000-2001 include:

- Employment Status of Graduates
- Employer Satisfaction with Graduates
- Passing Rates on Licensure and Certification Exams
- Level of Satisfaction of Students who Complete Programs

**Occupational Continuing Education: Supplying the Job Market with Skilled Workers:** Twice in the past four years the General Assembly has provided additional funding to provide life-long learning opportunities that are responsive to job market demands. Occupational Continuing Education (OCE) continues to increase in value because of the value employers place upon workers who are able to upgrade or acquire new job skills, via focused, short-course instruction.. Because of customized training delivered in this area, small class sizes are necessary, and therefore, expensive to operate. Today's workers need quick, effective, periodic non-credit instruction. Community Colleges can utilize OCE to supply the marketplace with the labor supply it so critically needs on a timely basis. Occupational Continuing Education: \$12,112,987.

**Faculty Salaries & Professional Development:** At the core of the educational delivery model that promotes and sustains economic development in North Carolina, understood to be the Community College System, are faculty, staff, and instructional resources. The requirements needed to generate a pool of skilled, critical-thinking labor are:

- A pool of high quality, well credentialed, and mature faculty
- Competitive, instructional resources to respond to deliver quality programming and services. To this end, raising faculty salaries to the national average is necessary.

In essence, a Community College can only produce high quality graduates, prepared to enter the workforce, if the environment in which they operate is nourished with sufficient operating resources. Sufficient salaries are needed to promote the recruitment, retention and development of outstanding faculty. Professional Development funds are needed to encourage and support faculty and staff in the effective and efficient uses of instructional technology and administrative computing systems. The result of this investment will be a world-class learning environment designed to transmit competencies necessary for the complex world of work. Increase Faculty Salaries & Fund Professional Development: \$58,520,046.

**Feeding The Entrepreneurial Spirit:** In communities throughout North Carolina, the need to create and sustain businesses both large and small is vital for economic prosperity. Small Business Centers, the Focused Industrial Training Centers (FIT), and the Center for Applied Textile Technology (CATT) are all focal points within Community Colleges for this activity. The results of this activity include more viable, well-equipped businesses that create job opportunities for those seeking employment. Additional resources are necessary to accomplish these results. Therefore, funds are requested to enhance and improve Small Business Centers based upon productivity and service; to expand and enhance the number and quality of FIT Centers in rural areas and across the system; and to improve instructional opportunities at the CATT. Small Business Centers, Focused Industrial Training & the Center for Applied Technology: \$3,302,276.

## **OPPOSITION TO TAX CREDITS, VOUCHERS**

**POSITION:** NCCBI remains strongly opposed to the diversion of tax funds to private K-12 schools through tax credits or vouchers.

**EXPLANATION:** Public schools need continued resources to move teachers to the national average in salaries, additional funds for technology, and funding for additional classrooms to meet the rapidly increasing school-age population. Diverting tax money away from meeting these needs is not the answer to improving public schools.

Business and industry in North Carolina get more than 93 percent of their employees from the public schools, and the biggest percentage of their tax money goes to the public K-12 sector. Private schools are not under any of the state's accountability measures. Therefore, we will continue to emphatically oppose this proposed raid on the State treasury.

However, NCCBI does join the State Board of Education in supporting the continued orderly growth of charter public schools to give an additional option within the public school system. Lessons learned from this nationwide movement should guide this expansion and the lessons learned should be applied to the traditional schools.

As long as traditional and charter public schools continue to show the dramatic improvements in student achievement which were begun several years ago, our opposition to tax credits and vouchers will remain in effect.

## **TEACHER/ADMINISTRATOR PREPARATION PROGRAMS AND FACILITIES**

**POSITION:** NCCBI recommends that the General Assembly, the State Board of Education and the UNC Board of Governors continue to support the improvement of teacher and administrator preparation and development programs and infrastructure enhancement that is essential to these programs. We further recommend the construction of new facilities and the equipping and renovation of existing facilities that are needed for on-campus and off-campus delivery of high-quality teacher and administrator preparation and development programs and delivery of effective outreach to public schools. Specifically, NCCBI:

1. Supports recent initiatives designed to improve the preparation and development of teachers and principals, and the outreach activities of schools of education and the Center for School Leadership Development;
2. Supports stronger links between schools of education and professional development programs and the goals and strategic priorities of the State Board of Education;
3. Encourages rigorous accountability standards for teacher and administrator preparation and development programs;
4. Recommends that existing facilities for state-supported schools of education be equipped with state-of-the-art instructional technology and curriculum-appropriate teaching and learning space; and
5. Supports the construction of facilities that enhance teacher and administrator preparation and development and outreach initiatives to the public schools.

**EXPLANATION:** Universities and colleges must continue to strengthen their teacher and administrator preparation programs through more rigorous recruitment and selection of prospective teachers and administrators; promoting higher academic expectations; improving the selection of clinical sites; implementing earlier, longer, and better supervised clinical experiences; and increasing partnership activity between university and public school faculty and administrators.

Improved physical resources are also a critical part of efforts to improve educators-in-training and practicing teachers and administrators in order to meet increasingly rigorous expectations and standards. Facilities designed to meet the unique program needs of modern teaching and learning must be available in order to prepare new teachers and administrators, and to renew the knowledge and skills of practicing educators.

## **PARENTAL AND COMMUNITY INVOLVEMENT**

**POSITION:** NCCBI supports the position that higher student achievement and safe schools are greatly enhanced through increased parent and community involvement in pre-school through twelfth grade education. NCCBI recommends that the North Carolina General Assembly promote and encourage education, business and government agencies to explore innovative strategies to support involvement in such important activities as teacher-parent conferences, volunteerism, and student's learning activities.

**EXPLANATION:** Recent research by The Conference Board indicates that employers offering family-focused programs have learned that every \$1 invested yields a \$2 return on their bottom line. This translates into good business both internally and externally. Companies have documented millions of dollars in savings from reduced absenteeism, reduced employee turnover, increased productivity, and improved employee morale.

Additional research has documented the effectiveness of parental and community support in the success of North Carolina public school students. This relationship between family and the workplace and its impact on

school readiness is well documented. Despite the increased sensitivity of employers to their employee's desire for a work-family balance, the pressures on working families continue to escalate according to a recent survey conducted for the National Partnership for Women and Families. Parents not only serve as employees in the workplace, they also serve as their children's first and most enduring teacher. Employer's help, as well as benefit from, supporting employees in their role as parents. An environment which enables employees to become knowledgeable and supportive parents adds value to our businesses, our employees, and overall quality of life.

By continuously improving relationships among government, business, and education leaders, we greatly increase the chances that today's children will be tomorrow's successful citizens.

## **CHARTER SCHOOLS**

**POSITION:** NCCBI supports charter schools as a choice for parents in the public education system. NCCBI strongly encourages the General Assembly to extend the cap on the number of charter schools that are allowed in the state and to ensure that additional resources are available to charter schools in order to meet the needs of students.

**EXPLANATION:** Charter schools are a viable and reasonable alternative to vouchers and tax credits, which are opposed by NCCBI. Currently, 95 schools are chartered in North Carolina, leaving 5 openings for the 2001-2002 school year. There are 33 new applications. Unless the cap is extended, quality charter schools will be delayed because of the arbitrary limit.

Many parents – customers of the state's public education system – are asking that the "freeze" on charter schools be lifted. NCCBI believes the legislature should listen to these customers. NCCBI believes the cap should be extended by the average number of charter schools that have been approved each year since 1997. This extension is requested with the assurance that NCCBI supports the criteria currently in place to determine which schools qualify for charters.

To ensure that charter schools have every opportunity to be successful, it is imperative that they receive more of the resources that are available to traditional public schools. These resources include additional funding for exceptional children and a requirement that the LEAs provide a pro-rata share of fines and forfeitures to charter schools in their districts.

Although "communication" cannot be mandated through legislation, NCCBI also encourages more communication and collaboration between charter schools, traditional public schools and local boards of education. Charter schools and traditional public schools can learn from each other. Through shared information and cooperation, ALL public school children will benefit.

## **SUPPORT FOR PUBLIC LIBRARIES**

**POSITION:** NCCBI recommends that the legislature provide additional financial support to North Carolina's public libraries by increasing funding for the Aid to Public Libraries Fund for 1) books and other resources to support homework and supplemental reading needs of children K-12; 2) technology to provide and improve access to information rich electronic resources, such as NCLIVE, for North Carolina citizens; and 3) expansion of after school homework assistance for children and teens.

### **EXPLANATION:**

**Books and Resources for Homework Support:** North Carolina children K-12 need additional books and library resources to support and supplement their educational progress in public, private, charter and home schools. Increased funding will enable local public libraries to provide multiple copies of classic titles, subject-related books and other materials to meet the growing demand for elementary and secondary school success. Students and parents increasingly turn to their local public libraries for books and related resources after normal school hours and on the weekends. Home schooled children frequent their local public libraries

throughout the day as well. Local public libraries are unable to purchase the needed subject materials to support the educational needs of K-12 children.

**Technology Access and Information:** School children are increasingly turning to technology at home and their public library to meet their information needs. North Carolina public libraries are now offering adults and children's access to e-magazines and online magazine indexes, such as NC-LIVE, for their educational needs. However, the public demand in libraries for computer access and the need for additional educational e-magazines and e-books is overwhelming. Government must insure information literacy for all its citizens and continue to reduce the "digital divide" by leveling the playing field and making resources that were formerly only available in wealthier urban areas accessible to people throughout the state. More public computer workstations are needed for homework needs after school and on weekends, additional e-magazines and e-books are needed which are too costly for individual families, and enhancing the public library's technology infrastructure is required to provide increased speed and bandwidth.

**Expanded Homework Assistance:** Local students require additional expert assistance with homework, training in how to navigate and evaluate information on the computer and help with projects after school and on weekends. Public libraries require additional staffing to provide or expand their programs for children and teens. Librarians have been trained in print and electronic information resources and know how to effectively evaluate and use them for educational purposes. Public libraries have served informally as homework centers for students for years, but the demand for this service has far exceeded local resources to accomplish this important task.

## **AID TO STUDENTS ATTENDING INDEPENDENT COLLEGES AND UNIVERSITIES**

**POSITION:** NCCBI strongly supports additional funding for North Carolina students attending the state's independent colleges and universities, including the request for a \$250 increase per program in the 2001 legislative session. NCCBI also supports NCICU's long-term goal (since 1969) of funding North Carolina independent college students at 50 percent of the operating subsidy received by public university students.

**EXPLANATION:** North Carolina provides funding for in-state students attending independent colleges and universities through two programs: The Legislative Tuition Grant (LTG) provides \$1,800 for each full-time, in-state student attending one of the state's 36 independent colleges and universities. The State Contractual Scholarship Fund (SCSF) allows \$1,100 per full-time equivalent student. The SCSF funds are awarded in varying amounts based on the student's financial need. The total appropriated per student amounts to \$2,900, while the state appropriates an average of over \$9,200 per in-state student in the state university system, a difference in the subsidies of about \$6,300 per student. The LTG and the SCSF are scholarship grants for resident students. These programs are critical to students' ability to choose to attend an independent college. Many independent college students are eligible to receive need-based aid, at some institutions over 90 percent. About 40 states provide similar types of aid to residents attending independent colleges and universities.

In addition to providing hundreds of millions of dollars in savings to the taxpayers of North Carolina, support of independent college students continues the tradition of a strong dual system of higher education in North Carolina. A strong dual system is especially important to the state at a time when demographic projections for college-bound students are significantly higher than the total capacity of higher education institutions in North Carolina.

North Carolina's 36 independent colleges and universities face many of the same funding problems the public university and community college systems are experiencing but are not eligible to participate in the \$3.1 billion bond issue. Except for a few competitive programs, independent colleges and universities receive no state funding. All of the funds appropriated under the two state programs are deducted directly from individual students' tuition bills, with no administrative fees charged.



## **AMEND REQUIREMENTS FOR LOCAL PUBLIC SCHOOL SUPERINTENDENTS**

**POSITION:** N.C. Citizens for Business and Industry (NCCBI) supports the amendment of qualifications for local public school superintendents to allow for leadership by well-qualified professionals who do not have formal education degrees.

**EXPLANATION:** GS 115C-271 states that “at a minimum, each superintendent shall have been a principal in a North Carolina public school or shall have equivalent experience.”

State Board of Education policy QP-A-005 states that a superintendent must hold a principal's certificate with an experience rating of P-01 or higher (or equivalent administrative experience as specified in the policy).

A person does not have to possess a degree in education to understand education issues and have the ability to manage an education system. This is particularly true for large urban districts which could benefit from non-traditional superintendents with extensive management experience. Under the current policy, Governor James B. Hunt, Jr., William Friday, Elizabeth Dole or Jim Goodnight could not serve as a superintendent in North Carolina, although they all have a broad knowledge of education issues and many years of management experience.

Former Colorado Governor Roy Roemer, a nationally recognized “Education Governor,” is the new school superintendent in Los Angeles. Seattle, New York and Washington, DC have all had non-traditional superintendents.

During the 1999-2000 school year, there were more than 30 superintendent vacancies in North Carolina. Giving school boards the flexibility to hire non-traditional superintendents would assist in filling these vacancies. Furthermore, as we seek to bring more accountability to our school districts, it is imperative that school boards have the opportunity to hire the best person for the job – whether or not that person has an education degree.

## **SCHOOL NURSES AND SCHOOL-BASED HEALTH CENTERS**

**POSITION:** NCCBI supports legislative action to appropriate the necessary financial resources to increase the number of school nurses and the number of school-based health centers in North Carolina.

**EXPLANATION:** The current state of child health in North Carolina requires the active participation of the public schools to address issues of child health and mental health and to improve student achievement and school performance. Therefore, the NCCBI Education Committee supports the recommendations of the N.C. Institute of Medicine 2000 Report on Child Health and the recommendations of the N.C. Leadership Council for Healthy Schools (1) to increase the number of school nurses in North Carolina from the current ratio of one nurse for every 2,200 children to one nurse for every 750 children and (2) to increase the number of school-based health centers in North Carolina from the current number of 51 in 26 counties to at least 160 more centers in at least 60 counties – both goals to be reached by the year 2010.

## **TO ALLOW BUSINESS LEADERS TO TEACH IN NORTH CAROLINA PUBLIC SCHOOLS WITHOUT CERTIFICATION REQUIREMENTS**

**POSITION:** NCCBI encourages legislation and education policy that will allow North Carolina business and technical professionals to teach technology-based curriculum in public high school classrooms without the requirement that they be working toward a teaching certificate. The legislation or policy should specify that the teacher will provide instruction for a limited time and will teach subjects in which they have expertise.

**EXPLANATION:** In 1998, the Wake County Commissioners, Wake County Board of Education, and Wake Technology Academy Board of Directors signed an interlocal agreement that established the Wake Technology Academy. This part-time school will focus on educating students using advanced technology tools to prepare them for job opportunities in a knowledge-based economy. The proposed plans are for Wake County

to build the Academy on the North Carolina State University Centennial Campus. Junior and senior high school students will attend the Academy and Wake Technology Academy Board of Directors will govern the Academy.

Business and industry representatives have been involved in designing the curriculum with Wake County Public School System curriculum professionals. It is anticipated the curriculum will include digital content, pharmaceuticals, bio-technology, electronics, software, telecommunications, research and development, internet services and IT professional services.

Business and industry will be encouraged to allow their executive professionals to teach at the Academy to ensure students are trained to current industry standards. We are anticipating teaching professionals to be compensated for their time by the Wake County Public School System or their respective company.

NCCBI supports this venture and others that bring business professionals into the state's classrooms.

## **LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI ENVIRONMENTAL CONCERNS COMMITTEE**

### **ADMINISTRATIVE LAW REFORM**

**POSITION:** NCCBI supports ongoing review and reform of the administrative process to assure fair and open rule-making with effective legislative oversight, as well as fair and efficient hearings for contested cases, including support for:

- rule-making procedures that ensure realistic input by those affected by the rules, adequate review of rules by the Rules Review Commission, continued oversight of rules by the General Assembly, and opportunity for judicial challenge to unsatisfactory rules;
- study by the General Assembly of ways to streamlining the rule-making process for certain types of rules or rule-making actions, where full review is not called for, such as adoption of non-controversial rules or amendments (provided that all protections in the previous paragraph are maintained); and
- expeditious and fair contested case hearing procedures that provide for full review of state decisions by independent third parties, in order to ensure that NCCBI and its members have a realistic opportunity to contest actions believed to be in error or unsupported by substantial evidence.

**BACKGROUND AND EXPLANATION:** Actions by North Carolina agencies can have very significant impacts and implications for NCCBI's members. The ability of even the largest entities to operate competitively and efficiently can be impaired by State rules or decisions. Interactions between State agencies and NCCBI members are controlled principally by the North Carolina Administrative Procedure Act, as codified in Chapter 150B of the General Statutes (APA), as well as the agency's organic laws and rules. The two principal areas of concern to NCCBI members under the APA are rule-making and contested cases.

Beginning in 1995, the General Assembly enacted several reforms of the rule-making process under the APA, including enhanced review of rules by the Rules Review Commission (RRC) and accountability through filing of rules with the legislature, with opportunity for legislation to delay or overturn rules which the General Assembly finds not to implement its intent. Agency actions, such as those often labeled as "policy," "program," "position," "memorandum," "interpretation," or other similar terms typically fall within the APA's definitions of rules and must be adopted as such, or they cannot and should not be enforced by the agencies.

NCCBI supported the adoption by the 2000 General Assembly of House Bill 968, which reformed the way that contested case hearings are handled by the Office of Administrative Hearings (OAH) and reviewing courts, including changes in Article 3 of the APA designed to enhance the significance to be given decisions

by the OAH Administrative Law Judge (ALJ) by the agency. NCCBI also supported changes in that statute that shortened the time for such hearings, clarified how ALJ's are to hear the cases, and expanded the instances where the regulated community is entitled to review attorney fees in successful appeals of agency decisions. NCCBI believes that these changes, which become effective in 2001, should improve the perception and the reality of the fairness and efficacy of the hearing process, but encourages the General Assembly to continue to monitor these decisions to ensure that agencies are, in fact, given greater credence to ALJ decisions where the law requires.

## **AIR QUALITY**

**POSITION:** In general, NCCBI recommends that air quality programs be implemented at the state level. Generally, we do not support new state programs that go beyond federal programs absent a clear showing that further measures are needed to protect North Carolina's air resources.

- NC should reinstate the one-hour ozone standard
- NC should go through a formal rulemaking process if there is a need to change current monitoring, permitting, and enforcement actions on condensable particulates
- Environmental Review Commission should evaluate the need for NC air toxics regulations

## **EXPLANATION:**

### **EPA SIP Call and 8-Hour Ozone NAAQS**

NCCBI supports the state's efforts to remain active in the litigation opposing the NOx SIP call. The state should continue to develop its own technically sound, cost effective state implementation plan (SIP) that will reduce ozone in North Carolina to levels needed to meet the National Ambient Air Quality Standard. However, until the courts have resolved the federal eight-hour ozone standard, the state of North Carolina should follow the lead of EPA and reinstate the one-hour ozone standard.

### **Regional Haze**

NCCBI members recognize the intent of regional haze requirements and believe lead authority for implementation should be vested in the state air programs. EPA should be responsible for modeling protocol and model development/calibration. Working with other states in the sub-region, DENR should have the flexibility to develop a regional haze program and improvement targets that are tailored to the needs of NC and bordering states. States must have the flexibility to develop and implement regional haze measures in a manner and on a timetable that is compatible with the PM 2.5 NAAQS.

### **Federal Land Manager Involvement in PSD/NSR Review**

The memorandum of agreement between NC and the federal land manager should not be enforced unless the state of North Carolina has adopted the agreement through the rule-making process outlined in the state's administrative procedures act.

### **New Source Review Reform**

NCCBI recognizes the value of New Source Review to the overall protection of North Carolina's air resources. NCCBI promotes implementation of the NSR measures in a manner that ensures the prevention of significant deterioration of air quality while allowing for economic growth and prosperity of businesses in North Carolina.

### **Enforcement**

NCCBI supports measures to address, in a fair and equitable manner, compliance situations that arise from

new emission factors, new emissions' data, and revised protocols. Giving sources adequate time to voluntarily make changes based on the new emission factor or new test data, rather than instigating enforcement action unilaterally, is appropriate and will generally yield the needed result.

### North Carolina Air Toxics Program

While the North Carolina air toxics program may have served a reasonable purpose prior to the implementation of new, substantial, federal requirements under Section 112 of the Clean Air Act enacted in 1990, the federal program now comprehensively regulates emissions from industrial processes based both on discharges to the atmosphere and on the basis of risk to human health and the environment. NCCBI suggests that the Environmental Review Commission of the General Assembly review whether there is a continued need for the North Carolina program in light of its current duplicative and redundant nature, and in light of the substantial costs that the North Carolina program poses on the regulated community.

### Condensable Particulate Matter

The North Carolina Division of Air Quality has recently begun requiring sources of particulate matter emissions to quantify not only emissions of "filterable" particulate matter, but also "condensable" particulate matter. This decisive change in regulatory requirements has been implemented by the DAQ, without any rulemaking, as a "policy."

NCCBI believes that the air quality standards in place in North Carolina are based on the quantification of "filterable" particulate matter only, and the requirement to quantify "condensable" emissions is a change in regulations that requires formal rulemaking.

## ALTERNATIVE COMPLIANCE

**POSITION:** NCCBI supports Alternative Compliance Legislation which will encourage state regulatory agencies to work cooperatively with industry on a voluntary basis to create incentives to achieve environmental excellence or cost effective solutions to environmental issues. Regulatory agencies should move the focus away from the "one size fits all" command-and-control approach to address site-specific circumstances. The regulated community needs a means to implement innovative alternatives to existing regulations that provides equivalent environmental benefits. NCCBI supports Alternative Compliance Legislation that proactively involves citizens/stakeholders participation and encourages environmental management systems.

Alternative Compliance Legislation is needed to:

- Set clear direction for public policy to motivate results-based environmental performance
- Create authority to apply flexible regulatory approaches
- Encourage state agencies to seek innovative approaches

## BROWNFIELDS REDEVELOPMENT

### POSITION:

- NCCBI supports State funding of sufficient DENR staff to enable expeditious reviews and approvals of Brownfield Agreements.
- NCCBI supports modifying the Brownfields law to extend to other parties the liability protections now afforded to prospective developers, including providing some protection to parties who caused or contributed to contamination at the property.
- NCCBI supports the implementation of additional incentives for the reuse of Brownfields properties, including tax-exempt financing for remediation and renovation costs, simpler compliance

with fire and construction codes, and techniques for further simplifying and shortening the process for approval as a qualified Brownfield property or building.

#### **EXPLANATION:**

- NCCBI supports the effective reuse of properties with actual or perceived environmental contamination, which are often referred to as “Brownfields.” Rehabilitation of these unused and underused properties encourages development of urban and other areas, thereby reducing sprawl; enhances municipal tax bases; provides additional employment opportunities, especially to populations who can best benefit from them; and strengthens downtown communities.
- NCCBI actively encouraged and supported the introduction and adoption of legislation during the 1997 General Assembly to provide for Brownfield Agreements and procedures to encourage the remediation and reuse of Brownfields. NCCBI also supported the adoption by the 2000 General Assembly of limited tax incentives for Brownfields properties and buildings. The Brownfield program enables developers to reuse Brownfields properties without taking on undue liability.
- In order to be effective, the reviews and approvals of materials required to be submitted to DENR to achieve the approval of a Brown must be expeditious.
- The Brownfields law as presently structured does not allow owners of Brownfields properties who caused or contributed to contamination to qualify for liability protections and to enter into Brownfields Agreements with DENR. This significantly limits the number of Brownfields properties that are likely to be reused because of the need for an independent, outside developer to enter into an agreement with DENR.

#### **COMMUNICATIONS:**

**POSITION:** NCCBI encourages the North Carolina General Assembly to require environmental agencies provide the public with balanced, scientifically based information on the state of the environment in North Carolina including positive information about how and where North Carolina’s environment is improving.

#### **EXPLANATION:**

The DENR, the EMC and other related state bodies consistently disseminate bad news concerning the environment while making little, if any, efforts to provide the public with information about the many successes achieved in protecting and enhancing the environment. While DENR gathers this information and annually prepares a State of the Environment Report, the state as a whole is rarely provided the positive information about how and where North Carolina’s environment is improving.

NCCBI recognizes that it is vitally important that everyone in North Carolina, most specifically the regulated community, continue to protect and enhance environmental quality. NCCBI is aware that the business community has accomplished much good work in the area of environmental protection and improvement. However, the business community has failed to effectively communicate the environmental improvements that have been made. Therefore, state regulators must and the business community should be encouraged to tell this “good news.”

NCCBI encourages its members and the business community to practice good environmental stewardship and to go beyond compliance with environmental regulations where practical. NCCBI further encourages business to communicate their efforts to protect, enhance and improve the environment.

#### **ENVIRONMENTAL JUSTICE**

**POSITION:** The State of North Carolina should implement only required elements of the EPA Guidance on Environmental Justice and ensure that initiatives:

- Protect individuals' civil rights, as specified by law, as well as protect the rights of companies citing a facility;
- Outline clear standards and timelines triggering and resolving Environmental Justice complaints and discourage frivolous Environmental Justice complaints;
- Provide for an improved, predictable, timely permitting process;
- Use stakeholders – including NCCBI – to address Environmental Justice issues that affect permitting.

**BACKGROUND:** Guidance on Investigating Title VI Administrative Complaints Challenging Permits should be finalized in 2001. This Final Guidance will replace Interim Guidance currently in effect and will ultimately revise how Environmental Justice complaints are reviewed and resolved. In addition, the Final Guidance will be used to advise state environmental agencies on how to avoid Environmental Justice complaints. As a result, DENR has and will continue to implement Environmental Justice Guidance recommendations into its already slow and often complicating permitting processes. NCCBI members are important stakeholders and can be affected if the permitting process is slowed for any reason.

## **POLLUTION PREVENTION, WASTE REDUCTION, AND ENERGY MANAGEMENT**

### **POSITION:**

NCCBI supports voluntary efforts by government, business, and industry to reduce energy consumption, reduce the volume, concentration, and toxicity of wastes generated, and to increase reuse of materials that otherwise would become waste, as important components of resource conservation and sustainable development.

- NCCBI supports improvement of the Universal Waste Rule to allow more flexible solutions for management of electronic equipment
- NCCBI supports linking incentives for business and industry to waste reduction targets established by NCDENR

### **BACKGROUND:**

Improved energy management and waste reduction benefit society through resource conservation and reduced emissions and discharges, while also benefiting businesses through regulatory compliance, reduced costs of production and waste management, and reduced exposure to liability.

Because DENR's Division of Waste Management and Division of Pollution Prevention and Environmental Assistance are coordinating to focus DENR's waste reduction outreach, DENR's roles as both enforcer and technical resource make some businesses reluctant to accept offers of assistance. NCCBI is in a good position to facilitate this process, using our communication network to provide information to our members and the experience of our members to provide feedback to DENR about how its programs may be benefiting or creating barriers to waste reduction by the private sector.

NCCBI encourages DENR's programs that disseminate information, provide technical assistance, and review State regulations and regulatory practices for disincentives to waste reduction. NCCBI encourages cooperation among DENR offices that regulate waste with those that promote waste reduction to strive for measurable improvements in waste reduction, in addition to enforcing regulations.

NCCBI will work with DENR to identify opportunities for reducing waste, improving energy management, and producing useable information and case studies of repeatable successes. NCCBI will work with DENR to develop pollution prevention concepts that have a market-based approach, along with providing assistance in developing special programs that target problematic waste materials. Finally, NCCBI encourages DENR to develop incentives that foster successful recycling entities.

## **REGULATORY REFORM / EMC FUNCTION AND APPOINTMENTS**

### **POSITION:**

NCCBI supports the development of legislation to modify the current appointment process for seats on the Environmental Management Commission (EMC) to assure more representative geographical distribution of seats on the board.

NCCBI supports dividing the EMC into two boards. One board would address air issues and another separate board would address water issues.

### **EXPLANATION:**

The current appointment process for members of the Environmental Management Commission includes no requirement to assure that there are representatives on the Commission from all areas of the state. As a result, the EMC currently has five members from Chapel Hill/Carrboro and no members from the Charlotte-Mecklenburg area. Only two members of the 17-member board are from west of Winston-Salem. Eight of the seventeen members are from the Raleigh-Durham-Chapel Hill metropolitan area.

There are several possible formulas to achieve geographic representation. One option would be to have a member from each congressional district appointed by the Governor and one member at large from any location appointed by the Speaker of the House and the President ProTem of the Senate. Another option would be to restrict the appointees by allowing no more than two members from any county. Regardless of the final form of the restrictions, the result should be a commission that better represents the citizens of the state.

Over the past five years, the Environmental Management Commission has seen a significant increase in the number of issues it has been asked to address. The Division of Environmental Management was split into two Divisions-the Division of Air Quality and the Division of Water Quality. The number of staff positions in air quality has more than tripled. The air toxics program has evolved into a significant state program well beyond the federal initiative.

NCCBI supports splitting the EMC into two boards. One board would address air issues and another separate board would address water issues. By dividing the board into two separate bodies, members who serve on the boards would be able to focus on a smaller area of interest, spend less time in meetings, hearings, committees, etc. The volume and diversity of issues the EMC is forced to consider overwhelm the current board of voluntary members. It is increasingly difficult to find qualified individuals to serve given the time commitment and complexity of issues the EMC is asked to address. For these reasons, NCCBI supports splitting the EMC into two boards.

## **RISK MANAGEMENT**

**POSITION:** NCCBI supports incorporating flexible and cost efficient risk evaluation practices in environmental decision-making where appropriate.

- NCCBI believes that risk management reform is needed in guidance, policies, and rules governing site remediation decisions, particularly in groundwater management.
- NCCBI believes that the environmental rule-making process in the State of North Carolina should incorporate a more thorough cost-benefit analysis, of which risk evaluation is an essential component.
- NCCBI believes that existing environmental rules should undergo a cost-benefit analysis by the North Carolina General assembly during the next five years.

**BACKGROUND:** NCCBI believes appropriate prioritization among competing societal demands can maximize environmental protection and the welfare of the state. We also strongly support risk-based decision

making for establishing appropriate remedial actions for environmental cleanups. In both cases, implementation of a risk-based decision making process will achieve better protection of human health, safety, and the environment at less cost. For decades, North Carolina has been implementing a host of diverse regulatory programs designed to reduce risk to human health, safety and environment. In many instances, specific programs have been reasonably implemented and have been effective in achieving the goals of a cleaner environment and healthier standard of living. Yet, even with the best of intentions, North Carolina agencies in many instances are not allocating the limited resources of the state in a cost-effective manner, but rather expending these resources on speculative risks that may not bring commensurate benefits. Today, businesses in North Carolina are now facing a competitive global economy that has rapidly exposed the fact that many environmental regulatory efforts are driving up the costs of doing business without delivering any significant accompanying benefit. Businesses are forced to raise prices, reduce production, eliminate jobs, cut research and development, or even leave the state. As a result, North Carolina will suffer needlessly. NCCBI believes that a process for incorporating flexible and cost efficient risk evaluation practices for both rule-making and environmental cleanups should be established.

## **SUSTAINABLE DEVELOPMENT AND GROWTH PLANNING**

**POSITION:** NCCBI strongly believes that sustainability principles and criteria must be balanced, and scientifically based so as to maintain our strong and growing economy which is so essential for the future well being of all North Carolina citizens, while at the same time enhancing and protecting the environment and preserving natural resources.

### **EXPLANATION:**

Sustainability has been defined as a socioeconomic state where current needs can be met without reducing the capacity of the environment or natural resources to provide for future generations. While NCCBI agrees in principal with this definition, the means for achieving sustainability are often hotly debated among the various stakeholders. All too often, special interest groups attempt to focus efforts on legislation, regulations and policies that would sacrifice continued economic development and a strong economy for growth control and land use restrictions. North Carolina's economy has grown rapidly over the last several decades and many of our citizens have benefited from this growth. This growth has placed serious demands on our transportation systems, educational institutions, infrastructure, environment and much more. This growth is expected to continue. Consider that our population grew from 6.6 million in 1990 to 7.6 million in 1998 and is expected to continue this growth in the future. 60% of our population growth has come from outside North Carolina. Metropolitan centered growth will continue. Population growth is tied to job growth with knowledge and high tech sectors achieving the fastest growth. Cities are expanding, suburbs at an even faster rate. Rural areas are lagging in growth and economic development. Transportation spending favors highways. A large amount of land is being developed. Air quality is getting worse in some areas. Rapid, sprawling growth could threaten the quality of life in some areas.

As can be seen from the above, environmental protection and preservation of natural resources are but two considerations in the broader question of sustainable development and growth planning. NCCBI supports a process that considers all aspects of sustainability and develops criteria that support continued growth while protecting the environment and preserving natural resources.

## **WATER SUPPLY/WATER RESOURCE PLANNING**

### **POSITION:**

- NCCBI supports efforts to ensure the continued availability of adequate supplies of water in all areas of North Carolina, including adequate supplies of water that is potable, either without treatment or with economically and technically feasible treatment.
- NCCBI supports the adoption of rules and the designation of capacity use areas (as defined below) where it is demonstrated that such actions are necessary to maintain the continued availability of adequate supplies of water, and provided that such rules and designations are



based on scientific evidence for their justification, involve the minimum restrictions that are demonstrated to be needed, encourage the development of alternate and additional water supplies, and rely to the maximum extent possible on voluntary efforts by users and local governments.

- NCCBI opposes the adoption of rules or the designation of capacity use areas that entail arbitrary reductions in required usage.

**EXPLANATION:**

- Access to adequate amounts of water is vital to maintaining the quality of life in North Carolina and its continued attractiveness for business and development. Historically, North Carolina has had adequate access to water that is either potable or is capable of being made potable through treatment. The State relies significantly on groundwater as a source of water, particular for drinking and consumption.
- Because of localized concerns about the continued availability of adequate water in certain parts North Carolina, the General Assembly first enacted legislation in 1967 that addressed the issue of withdrawal of significant amounts of groundwater from certain areas that have been designated as areas (so-called "capacity use areas"). Based on similar concerns, the General Assembly later passed in 1993 additional statutes that regulated the transfer of surface water between one surface water basin to another basin (an "inter-basin transfer"), where such withdrawal might adversely affect the quality or quantity of such water.

Only one area within the State is currently declared to be a capacity use area, but recent data provide some support that other areas could justifiably be considered for classification as capacity use areas, including an area in eastern North Carolina that is now being proposed for reclassification; however, the proposed rules to implement this reclassification has raised concerns among potentially effected parties. NCCBI believes that the restrictions under capacity use rules should be minimized and, to the maximum extent practicable, rely on voluntary efforts, rather than mandatory reductions and other restrictions.

**WATER QUALITY**

**POSITION:** NCCBI supports reform of the permit process to promote efficiency, and review of water quality standards and limitations to ensure that the standards are based on sound science.

**EXPLANATION:**

The backlog for permits continues to grow, despite periodic attempts to wipe out the backlog. Renewals which present no change in loads or flows should be fast-tracked, and requests for public hearing should be closely scrutinized for genuine issues. DWQ staff should place more reliance in certification by professional engineers regarding the design and limitations for discharge facilities. Having entry level engineers reexamine the work of experienced professional consultants is time-consuming and inefficient. Adequate sanctions are in place to deter submittal of fraudulent data and information. The use of the general permit should be expanded. "Secondary impacts" analyses should be restricted to certain and directly-related impacts from a facility. Water quality standards have been proposed and adopted that are not based on good science, are unjustifiable from a risk standpoint, and defy or complicate compliance verification due to the costs and limitations of analytical methodology.

**WETLANDS**

**POSITION:** NCCBI supports a wetlands regulatory program that is based on proper statutory authority, and that makes sense in terms of wetlands protection and reasonable, sound development.

DWQ should repeal the present wetlands rules and work with the regulated community to propose appropriate supporting legislation for a wetlands program

DWQ should commence a meaningful stakeholder process to craft a rational program of wetlands regulation

**EXPLANATION:**

NCCBI believes that the current wetlands standards have been adopted without proper statutory authority. NCCBI is party to a lawsuit currently pending which challenges the validity of the present wetlands rules on the basis that those rules lack statutory authority.

Numerous attempts in the past by the DWQ to have the General Assembly provide authority have been unsuccessful. Failing that, the EMC simply created the authority by rule, a route which is unconstitutional in North Carolina, ignoring the limitations of the statute for allowable permit programs, and overriding the objections of the Rules Review Commission. The rules create a parallel, but more onerous state permit program for wetlands projects. As the rule stands, it makes unlawful in North Carolina any activity in wetlands that is not subject to the permit requirement of Section 404 of the Clean Water Act.

## **LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI HEALTH CARE COMMITTEE**

### **MANDATED BENEFITS**

**POSITION:** NCCBI opposes in principle any efforts to mandate or require employers to provide specific benefit coverage under group health care plans. Employers are encouraged to offer health care coverage consistent with their ability to afford them and to promote good health.

**EXPLANATION:** An increasing number of proposals for the mandating of benefits have been considered by the General Assembly in recent years. The cost ramifications of mandating health care benefits have resulted in a growing concern on the part of the business community, particularly when viewed in the context of present health care cost increases.

Therefore, all proposals for mandated benefits should be examined carefully in light of this concern.

NCCBI urges state legislators to proceed cautiously on benefit mandates by:

- Requiring that all benefit mandate legislation include an economic impact statement on new costs created by the mandate and the likely impact of these costs on the availability and the affordability of insurance coverage in North Carolina; and
- Referring all benefit mandates to a single committee in the House and in the Senate, so that a vigorous debate of the cumulative impact of these mandates is possible; and
- Requiring that the Teachers and State Employees Comprehensive Major Medical Plan cover any new benefit mandate for at least one year before requiring private employers to cover the mandated benefit.

### **EXPANSION OF MEDICAL MALPRACTICE LIABILITY**

**POSITION:** NCCBI strongly opposes proposals which would expand medical liability to include employers and health plans.

**EXPLANATION:** NCCBI opposes expansion of medical liability to employers and health plans for several reasons. First of all, the threat of lawsuits would discourage many employers from offering insurance at all, thereby leaving millions of Americans uninsured. According to a U.S. Chamber of Commerce study conducted

in February, 1998, 57% of employers say they would be likely to stop providing health care coverage for their employees and dependents if expanded liability is passed.

Secondly, expansion of medical liability goes against the business community's long-standing support for tort reform because it would only create more expensive lawsuits and court delays. A New York Times editorial in April, 1998 says "jury awards in state courts for malpractice are notoriously capricious and do more to reward lawyers than patients."

Lastly, NCCBI opposes expanding this liability to health plans because, under current ERISA law, a patient can already sue his/her health plan in federal court, and the court may award attorney's fees, court costs, and the value of the benefit denied.

## **MANDATED DIRECT REIMBURSEMENTS**

**POSITION:** Generally, NCCBI opposes legislative efforts to mandate insurance companies to directly reimburse non-physician health care providers.

**EXPLANATION:** Several non-physician health care providers have petitioned the General Assembly from time to time to require insurance companies to reimburse them directly for their services.

Presently, the N.C. General Statutes require direct reimbursement to some licensed providers who can practice without the supervision of a physician.

Direct third-party reimbursement to a non-physician health care provider most likely serves to increase the cost of health care. The non-physician health care providers requesting direct third party reimbursement may not take the place of any existing health care provider now providing those services. Instead, we may simply have more providers in the market place providing the services and receiving reimbursement. In most instances, the care is already provided in a cost-competitive manner.

Therefore each proposal for direct reimbursement should be examined carefully in light of these concerns.

## **LONG TERM CARE INSURANCE INCENTIVES**

**POSITION:** NCCBI supports incentives such as tax credits for individuals to promote the purchase of private long term care insurance. NCCBI also supports recent activity on long-term care legislation by the North Carolina General Assembly and the United States Congress, but feels that the legislation may need to be reexamined at some point in the future if it is not adequate.

**EXPLANATION:** Nearly three-quarters of all the patients in North Carolina's nursing homes rely on the Medicaid program to pay for their care. With the aging of the population, this will likely put more upward pressure on Medicaid spending in the future. At least part of this pressure can be alleviated by the private sector through the increased use of long term care insurance. Currently, less than two percent of nursing patients have such insurance to pay for their care. Incentives such as tax credits for premium payments would eventually lead to less reliance on government sponsored programs and more personal responsibility for the financing of long-term care (including nursing homes and home health care).

# LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI LEGAL ISSUES AND WORKPLACE POLICIES COMMITTEE

## ERGONOMICS

**POSITION:** NCCBI has been the driving force behind blocking an ergonomics standard in North Carolina and will continue to oppose any ergonomics standard at the state and federal levels. There is no evidence that such a standard would improve the safety and health of North Carolina employees and the costs would be disproportionate to any unknown benefit. Thus, such a standard would put North Carolina businesses at a competitive disadvantage with businesses in other states.

**EXPLANATION:** Ergonomics is generally defined as human engineering – an applied science concerned with finding ways to make people safe, comfortable, and productive while they work. In the workplace, North Carolina OSHA and federal OSHA have attempted to regulate employers in the area of ergonomics by issuing citations based on OSHA's general duty clause where they feel that employees have been exposed to risks of harm from repetitive motion injuries. However, when challenged, these citations have not survived scrutiny because OSHA has been unable to prove either (1) that workplace conditions cause the injury or illness; or (2) a feasible means of abatement. This highlights the fact that the evidence regarding the cause of such injuries or illnesses is uncertain. There is a lack of agreement among doctors and industrial scientists on what causes repetitive motion injuries and how to prevent them.

A state standard adopted by the N.C. Department of Labor was blocked by the N.C. Rules Review Commission in December 1999 and a lawsuit regarding that decision is currently pending. NCCBI will continue to communicate with state officials about the detrimental impact such a standard would have on North Carolina businesses. North Carolina employers have over the past several years achieved noteworthy reduction in workplace injury and illness rates through compliance with existing regulations and self-imposed practices to help ensure the safety and well-being of employees. North Carolina competes every day with other states, particularly states in the southeast, to bring jobs to North Carolina. Eastern North Carolina is suffering from recent hurricanes and flooding. Everything needs to be done to boost North Carolina's economy and continue to bring good paying jobs to the state. A new layer of regulations would be a burdensome deterrent for businesses and would put North Carolina at a competitive disadvantage with the rest of the country.

NCCBI will also continue to monitor the proposed federal ergonomics standard. The Small Business Administration estimates such standards would cost businesses \$63 billion to implement. Federal OSHA have been working on a draft ergonomics rule for more than 5 years, and considerable federal resources have been devoted to this effort. As the U.S. Chamber of Commerce and other business groups at the federal level are challenging the rules in court, NCCBI will work collaboratively with these groups.

## TORT REFORM

**POSITION:** NCCBI applauds the North Carolina General Assembly for the actions taken in 1995 to enact common sense tort reforms such as limiting punitive damages, and revising our products liability statute. NCCBI believes that these were important first steps toward bringing common sense and balance back to our civil justice system. NCCBI would support further changes to eliminate punitive damages, limit non-economic damages, end the collateral source rule, and provide a right of subrogation to health insurers and others that may have paid a portion of the damages suffered by an injured plaintiff.

### EXPLANATION:

Punitive Damages. In 1995, the General Assembly enacted legislation limiting punitive damages. That legislation went a long way toward correcting the problems caused by punitive damages in our civil justice system, particularly encouraging litigation and enriching plaintiffs and their attorneys well beyond any amount lost by the plaintiff. However, by definition, any punitive damage award is in addition to what is necessary to compensate a plaintiff for the injuries sustained and, as such, is a windfall to the plaintiff and his or her attorney. The

general public pays for these windfalls through increased product costs, insurance costs, and either increased taxes or decreased public services, or both. These costs to the public rarely produce a public benefit. The usual justification put forth for punitive damages is to deter and punish intentional or malicious conduct. Yet, deterrence punishment for such conduct is properly the province of our criminal courts, where fines and probationary terms can be put to public benefit. The civil courts are not the proper forum for deciding punishments.

Non-Economic Damage . Under our current system of civil justice, a plaintiff may attempt to recover compensatory damages that include past and future medical expenses, past and future lost wages, and “non-economic” damages, which are those amounts awarded to the plaintiff and that the Defendant must pay to compensate plaintiff for pain and suffering the plaintiff claims to have endured as a result of the defendant’s conduct. These damages by their very nature are purely speculative. There is no way for a jury to objectively measure pain and suffering and, as a result, the award of such damages is merely a guessing game determined largely by the amount of sympathy the jurors may feel for the plaintiff. These damages are the primary cause of many lawsuits that could otherwise be easily settled without litigation. “Pain and suffering” damage claims also cause inflated settlements. Other states have recognized this and passed legislation limiting or restricting non-economic damages. NCCBI urges the General Assembly to enact legislation to provide objective guidance to juries in deciding the amount of non-economic damages to award, such as caps or limits set as a multiple of medical expenses. Such a system would preserve the plaintiffs right to fair and reasonable compensation for damages actually incurred, including some compensation for pain and suffering, while insuring that jurors act from reason and evidence, and not sympathy.

Collateral Source Rule. When determining a compensatory damage award, the collateral source rule prohibits both the judge and jury from considering the fact that the plaintiff has already been compensated for much of his or her financial loss, such as payment of medical costs through health insurance or payment of income replacement benefits through a disability insurance plan or workers’ compensation plan. The goal of the civil justice system is to reasonably and fairly compensate the plaintiff for actual losses. When a plaintiff receives an award for medical bills that have already been paid by another source, the plaintiff and the plaintiff’s attorney receive a windfall. These multiple recoveries contribute to the rising costs of medical care and health and liability insurance. Elimination of these multiple recoveries by abolishing the collateral source rule would be an important step in controlling health and liability insurance costs.

Subrogation. As an alternative to eliminating the collateral source rule, the General Assembly should consider enacting a statute to specifically allow health insurers, disability insurers, and others that may pay a portion of an injured party’s expenses pursuant to a contract to recover that money paid to the plaintiff out of any recovery the plaintiff receives from a negligent third party. This would accomplish the same goal as eliminating the collateral source rule; that being, to control health insurance costs by preventing double recoveries that serve only to enrich a plaintiff or his or her attorney.

## **PRIVACY**

**POSITION:** NCCBI values privacy and strongly disapproves of unreasonable or unfair use of information obtained in a business transaction. At the same time, NCCBI disagrees with proposals for overly-burdensome or restrictive privacy rules. Extreme proposals pressed by some would prevent North Carolina businesses from meeting customer expectations, providing desired services, and competing on a national or international basis.

Numerous federal and international privacy provisions already affect North Carolina businesses. In an age of e-commerce and intense national and global competition, North Carolina businesses need a uniform standard, and will be placed at a severe competitive disadvantage if they are subjected to additional privacy requirements in North Carolina or in other places in which they do business.

For these reasons, North Carolina should support uniform standards of reasonable privacy protection.

**EXPLANATION:** Consumers understandably are concerned about the privacy of their personal information. This concern has grown with the increased precision and speed of computer information processing. Much of

the concern, however, stems from misconceptions about the nature of consumer information businesses maintain and the use to which they put this information.

In most instances, the character of information utilized has not changed in the last 100 years. The efficiency with which such information is employed, however, has improved. One hundred years ago, a hardware dealer provided the names of “good prospects” to a feed dealer. Fifty years ago, a department store tracked purchases by customers and targeted catalogs and mailers on this basis. Twenty-five years ago, a retailer exchanged mailing lists for direct mail contacts.

Today, this same kind of information is used more efficiently to offer customers information that covers more precisely the products and services they want. A furniture manufacturer can identify customers likely to be particularly interested in outdoor products. A grocery retailer can track purchases through discount cards and send coupons and special offers in line with a customer’s preferences. Although “personal” information related to purchases is used in these ways to screen interested customers, no confidential financial information is made available to the public.

Some consumers identify marketing methods they dislike with invasions of privacy. Existing federal and state regulations address telemarketing, direct mail, and e-mail “spamming.” In those cases, it is the choice of marketing strategy, not the use of personal information, that is the issue.

Financial information and health information are of special concern. Federal regulators already have imposed some stringent standards in both areas, and are in the process of imposing more. In both cases, restrictions must be balanced to allow legitimate access to appropriate information. For example, patients are ill-served if medical care providers cannot share information necessary to proper diagnosis and treatment. The public may be defrauded, and access to financial and insurance products may be curtailed, if financial service providers cannot obtain accurate information.

Some groups seek to limit employers in monitoring the use of computers and other electronic equipment by their employees. Employers provide this equipment, however, and have the duty as well as the right to prevent its abuse. Problems that can arise from a failure to supervise employee use of electronic equipment include lack of productivity, infringement of the confidentiality of employer (and customer) information, risk of harassment of other employees and customers, and fraud.

NCCBI supports a uniform, sensible, and balanced standard of privacy protection that:

- Ensures the ability of a consumer to place reasonable limits on the use of highly personal information;
- Requires that a consumer affirmatively “opt out” in order to limit information sharing, rather than imposing “opt in” requirements that effectively prohibit reasonable use of information;
- Requires a business to use reasonable and realistic methods to notify consumers of information sharing, rather than imposing burdensome notice practices that make reasonable use of information prohibitively expensive;
- Preserves the ability of a business to use customer information for its internal use and for “cross-marketing” of other services provided by that business and its affiliates; and
- Is uniform in its application, so that a business is not unduly burdened by extreme privacy requirements in a particular place in which it wishes to market its products.

## **JUDICIAL DISCRETION TO LIMIT APPEAL BOND**

**POSITION:** NCCBI supports new legislation granting North Carolina trial judges the discretionary authority to establish reasonable appeal bonds. Under the current system, many defendants are effectively denied their right to appeal erroneous trial court rulings due to the enormous financial burden required in posting an appeal bond.

**EXPLANATION:** During the past year, the General Assembly adopted legislation recognizing the inherent unfairness in requiring defendants to post huge appeal bonds in order to prevent execution on a trial court judg-

ment while the judgment, and possibly erroneous trial court rulings, are on appeal. This recent legislation addressed the problem of mandatory appeal bonds in a discrete context (the tobacco industry); however, the issue is present in a number of other contexts and the underlying public policy rationale should be expanded to include all civil judgments for money damages. Specifically, the amount at which to set a reasonable appeal bond should be left to the discretion of the trial judge.

The current non-discretionary formula used for setting appeal bonds often results in the de facto denial of a defendant's right of appeal. Following the issuance of a judgment for money damages, North Carolina law requires a defendant to post an appeal bond to stay execution on the judgment pending appeal. Under existing law, this appeal bond is set to equal the amount of the money judgment plus an additional 10-15% to cover interest and damages for delay. In trial court decisions involving large, although erroneous, money judgments, many defendants are incapable of raising sufficient funds to meet the appeal bond requirement and thus cannot stay execution on the judgment. As a result, defendants are forced into settling cases that they would otherwise appeal because they cannot risk the chance that the plaintiff will execute on the money judgment and force a sale of the defendant's home or business. Such injustice could be prevented if trial judges had the discretionary power to place a reasonable limit on appeal bonds.

## **JOINT AND SEVERAL LIABILITY**

**POSITION:** NCCBI supports a change in our civil justice system to eliminate joint and several liability so that a defendant in a civil action is held financially liable for only that portion of the plaintiff's damages actually caused by that defendant's conduct.

**EXPLANATION:** Under our current civil justice system, when the negligent acts of two or more defendants combine to cause injury to another person, any of the defendants can be required to pay the entire amount of the plaintiff's damages. This is true no matter how slight that individual defendant's negligence may have been. Such a system encourages litigation, rewards a plaintiff's attorney for taking a "shotgun" approach to filing suit, firing lawsuits in every direction instead of focusing on the defendant truly at fault, and discourages reasonable settlements of tort actions as the plaintiff's attorney pursues the target defendant with the "deep pocket."

For example, assume a situation in which a person in a store buys something, then runs from the store out to his car, knocking over a little old lady and severely injuring her. The lady sues the patron for negligence in running through the store and also sues the store for failing to have a sign posted warning patrons against running in the store. If the jury finds that conduct on the part of the store to be negligent, however slight, the store could be required to pay the entire amount of the money judgment awarded by the jury to the lady.

NCCBI supports legislation that would eliminate joint and several liability by limiting a defendant's liability in a civil action to its pro rata share of plaintiff's damages, depending upon the number of defendants in the case.

## **JUDICIAL SELECTION AND RETENTION IN NORTH CAROLINA**

**POSITION:** NCCBI firmly supports continued changes in the way we select and retain judges in North Carolina.

**EXPLANATION:** North Carolina has good reason to be proud of its civil justice environment, including a stable judiciary composed of learned, impartial, independent, and career-minded judges. This is due to the fact that, even though our Constitution provides for popular election of judges, and they all stand for re-election periodically, almost all of them were initially appointed to by our governors, and, until recently, were frequently re-elected.

This situation has changed. The rise of the two party system has made elections contested and more competitive. Special interests at both ends of the political spectrum have contributed heavily to candidates in judicial elections. In one hotly contested election in 1994, plaintiffs' attorneys gave hundreds of thousands of

dollars to someone of no judicial experience to unseat a sitting Supreme Court Justice because of his perceived conservative views. Although the plaintiffs' lawyers' candidate was eventually defeated, in all more than three-quarters of a million dollars were spent by three candidates for this one seat on the Court.

Elections by popular vote are for those who want to put in place certain governmental policies so they can attract a constituency. This is not the case for judges who, except in a very limited sense, do not establish policy. Judges decide cases. They consider cases which are properly before them and brought by aggrieved parties. For the most part, they decide them on the basis of legal Constitutional principles, statutes, common law, and precedents. Judges most often make decisions which are NOT popular.

The judiciary is answerable to the people because the people can change the Constitution, and legislatures can change the common law and the statutes. Also, North Carolina judges are susceptible to administrative removal from office by action of the Judicial Standards Commission and the Supreme Court for questions of performance or ethics. Other officeholders are not accountable in this way.

NCCBI applauds the Legislature for its first move in this direction: the approval of nonpartisan elections of Superior Court Judges who will run and be elected only in their own districts. We are also encouraged by the increased use of alternative dispute resolution, and urge its expansion. Finally, we believe the Legislature should continue to weigh the recommendations of the Commission on the Future of Justice and the Courts (December 1996) for further meaningful reform, in particular for appellate judges, appointment by Governor for both initial term and retention elections every eight years thereafter.

## **BUSINESS COURT**

**POSITION:** NCCBI supported the establishment of a North Carolina business court and continues to support adequate funding for facilities, equipment and personnel to enable the court to function justly and effectively. NCCBI also supports the passage of legislation providing automatic assignment of certain cases, including those involving our corporate and business laws, to the court for adjudication.

**EXPLANATION:** The General Assembly established a business court having statewide jurisdiction over complex business litigation. The development of a stable, consistent body of case law regarding business litigation issues is important to the continued development of a strong economy here in North Carolina.

Largely by virtue of charitable grants and other efforts by the business and legal community, the court has been able to move from haphazard use of empty courtrooms (if available) to a more permanent leased space with adequate technology and equipment. Funding from the state has been largely limited to personnel and equipment. The state has never provided recurring funding for a lease for a court facility. Similarly, counties have not been forthcoming with any facility funding. Recurring funding for the facility needs of the court is critical to its continued success.

With respect to assignment of cases to the business court, the process now involves recommendation for assignment by a superior court judge and then a case-by-case determination by the Chief Justice. As a result of this cumbersome process, many cases which should be referred do not get to the Business Court. This is particularly true of complex business litigation, whether involving individuals or businesses. Often these cases are referred very late procedurally or not at all. Automatic assignment of certain cases, for example those arising under Chapter 55, is necessary to establish a consistent body of case law in this area.

Expansion of the business court to Raleigh and Charlotte (the current site is in Greensboro) and the addition of jurisdiction in high tech and/or biotech cases is also advisable. The continued growth of the business court bolsters our justice system and serves as a good economic tool at the same time.

## **SESSION LIMITS**

**POSITION:** NCCBI urges the General Assembly to limit legislative sessions to a specified number of legislative days for both the long session and the short session. The "short session" should be strictly limited to



budget matters and should not include carryover legislation from the long session — unless legislation is needed to address a true emergency situation.

**EXPLANATION:** During the last two years, the state budget was passed before the beginning of the fiscal year. But this was the first time that has happened in 20 years.

The 1998 regular legislative “short” session convened on May 11 (after a six-week special session) and adjourned October 29. When legislative sessions last this long and a state budget is not adopted by July 1, public schools and state agencies experience extreme difficulty in planning for the next fiscal year. It is imperative that the legislature begins to adopt the state budget on time. Lengthy sessions also leave legislators little time to meet between sessions for important study committees.

North Carolina is the only state in the southeast without a limit on the length of sessions. Virginia has a 30-day calendar maximum in odd numbered years and a 60-day calendar maximum in even numbered years. Tennessee limits pay and per diem allowances to 90 legislative days. South Carolina’s legislature must adjourn by the first Thursday in June. Georgia is limited to 40 legislative days per year. The Texas legislature meets every two years.

Lengthy legislative sessions place a tremendous burden on people who wish to serve as citizen legislators. For many, it is too great a burden on family, business and career. We need to continue electing people with different backgrounds, experiences and occupations if we are going to represent all sectors of our state’s population. Session limits would help ensure that we keep this balance and do not end up with only retirees and wealthy people serving in the General Assembly.

## **FUTURE OF THE COURTS COMMISSION**

**POSITION:** NCCBI continues to support the recommendations made by the Commission on the Future of the Courts and urges the enactment of legislation implementing them.

**EXPLANATION:** Working over the course of several years, a distinguished commission of citizens, legislators and members of the business community came forward with recommendations to improve our court system. The Commission on the Future of the Courts, co-chaired by former Chief Justice Rhoda Billings and John Medlin (and also known as the Medlin Commission), issued its report in 1996. Legislation embodying the proposals was introduced and studied for two legislative sessions. Portions of the report’s recommendations have been enacted, but many critical improvements remain to be made, including a single trial court level and larger districts. The most important recommendation, judicial selection and retention, is the subject of a separate position by NCCBI.

Without these recommendations, the court system may not be able to handle the needs of our state in the 21<sup>st</sup> century.

## **FOUR YEAR TERMS FOR LEGISLATORS**

**POSITION:** NCCBI strongly supports a constitutional amendment allowing four-year terms for all legislators.

**EXPLANATION:** According to *The Book of the States*, 37 other states currently allow four-year terms for state senators. Five other states currently allow four-year terms for state representatives.

NCCBI believes that four-year terms for North Carolina Legislators, both House and Senate members, would be beneficial for the state and for the business community for several reasons.

First of all, having legislators campaign every four years instead of every two years would be one of the most effective ways to reduce the increasing costs of running for public office. Secondly, legislators will have more time to become acquainted with the legislative process, therefore, making them better policymakers for our state. Lastly, longer terms would allow members of the business community, and citizens in general, more time to build good working relationships with their representatives in state government. It would allow more

time for part-time legislators to work at their jobs, to represent their constituents in Raleigh, and to help the voters with problems they may be having with state government.

## **EMPLOYMENT-AT-WILL**

**POSITION:** NCCBI supports the employment-at-will doctrine because it is beneficial to employer and employee alike: it allows businesses to respond to fluctuations in the economy and to balance their labor force best, and it gives employees the freedom to seek new job opportunities as their talents and inclinations dictate. We oppose any erosion of employment-at-will.

**EXPLANATION:** Employers and employees in North Carolina have operated under the doctrine of “employment-at-will” for many years. This concept means that the employment relationship continues at the discretion of both parties. In other words, employees can decide to quit a job for any reason at any time, and likewise, employers can terminate an employee for any reason at any time—as long as the employer does not violate any state or federal law. We believe these protections for the employee to be sufficient for those larger companies affected; for the smallest businesses, any further requirements for written contracts or regulations would be burdensome.

## **WORKERS’ COMPENSATION REFORM**

**POSITION:** NCCBI continues to support changes in the North Carolina Workers’ Compensation Act to fully restore that law to its original intent as a simple and efficient system of compensating employees injured in workplace accidents while protecting employers from civil litigation and unlimited and unpredictable compensation liability. Specifically, NCCBI supports changes to protect employers from being sued regarding workplace injuries where the employer is paying workers’ compensation benefits to the injured employee, to limit payment of workers’ compensation benefits only to those who are physically unable to work as a direct result of their workplace accident, and to make the administration of the act simpler and more efficient, thereby reducing the need for costly litigation.

**EXPLANATION:** NCCBI was the leading organization in the successful fight to reform North Carolina’s workers’ compensation system in 1994. That reform achieved its goal of relieving the dramatic upward pressure on workers’ compensation costs to employers that had occurred during the decade prior to that reform. Since 1994, however, court decisions and other events have renewed the upward trend in workers’ compensation costs. Some important changes need to be made now to prevent the kinds of double digit rate increases like those that occurred in the late 1980’s.

For example, there should be limitations on how much a claimant can receive when a workplace injury combines with a pre-existing condition to cause a disability. In such a situation, the employer should be liable only for that portion of the disability caused by the workplace incident, and not that which results from a pre-existing condition. Alternatively, an employer should be held liable for compensation benefits only when the occupation is the primary cause of a disease or injury. Second, consistent with the practice in all of our neighboring states, there should be a limit on the number of weeks that a person can receive workers’ compensation benefits for any one injury. North Carolina’s Workers’ Compensation Act originally limited a claimant to receiving 300 weeks of compensation except in the most extreme cases. That limit was written out of the law by a court decision and should be restored. Restoring the limit would streamline the system and reduce litigation. Third, because of the ease with which such claims can be fabricated, compensation for mental stress without physical injury should be prohibited. Next, wage replacement benefits should end at retirement age, when the employee would not have been earning wages to be replaced even without an injury.

Perhaps most importantly, once an injured employee is physically able to return to some type of work, the employee should be required to return to work or else prove circumstances that justify a decision to not return to work. In other words, there should be no presumption in favor of the employee that benefits should continue until the employee actually returns to work. The employee controls whether or not he or she actually returns to work and the employer should not be required to continue payment of benefits after the employee’s treating physician determines that the employee is physically able to work.

These are the major changes that are necessary to restore our workers' compensation system to its original intent. To the extent that these unaddressed issues continue to cause unnecessary and unfair costs in our workers' compensation system, they continue to be a hindrance to economic development, job creation, and commercial competitiveness. So long as the workers' compensation system remains a highly litigated scheme of general entitlement to unemployment compensation and medical benefits, NCCBI believes that both employers and employees are ill-served.

## **CONTRIBUTORY NEGLIGENCE**

**POSITION:** NCCBI firmly supports the current system of Contributory Negligence, which has worked well and generally kept settlement, judgments, and recoveries at a reasonable level. Any change to some type of Comparative Fault erodes the economic well-being of the State by increasing costs.

**EXPLANATION:** For well over 100 years, North Carolina has followed the doctrine of Contributory Negligence in so-called tort or negligence cases. Simply stated, this doctrine holds that a plaintiff cannot recover damages in a negligence suit if his own negligence was one of the direct causes of the injury. Where the negligence of the plaintiff is clear-cut, the presiding judge will dismiss the plaintiff's suit as a matter of law. For example, under present law, if a drunk driver on the wrong side of the road collides with a speeding vehicle in the opposite lane, the court would dismiss any lawsuit by the drunk driver because of his clearly negligent conduct. On the other hand, under the doctrine of Comparative Fault, the judge would be compelled to submit the case to the jury. That fact alone gives substantial value to otherwise valueless claims.

The impetus for Comparative Fault legislation has come almost exclusively from state and national associations of plaintiffs' attorneys specializing in negligence practice. From the point of view of these groups, there are more and larger recoveries under Comparative Fault.

Private cost studies conducted in North Carolina in 1983, 1985, and 1989 by professors at the School of Business at UNC-G indicate that automobile liability claims alone under the Comparative Fault doctrine would add between \$118 million and \$245 million (24 to 32% higher) annually to premium costs, and more recent figures would increase that figure. More recent data from a study conducted in the State of Maryland confirmed the substantial costs that would be imposed by a change to comparative fault. Many more millions would be paid out in settlements and judgments by homeowners, merchants, manufacturers, doctors, and many other professionals and self-insurers. Some other groups that would be vitally and adversely affected by Comparative Fault would be the counties, cities, school boards, and even employees of the state.

An article in the State Legislatures, published by the National Conference of State Legislatures, asserts that a state's civil justice environment is a substantial element in rating its business climate. North Carolina's recent success in economic development has resulted, in part, from our current civil justice system.

## **RETALIATORY EMPLOYMENT DISCRIMINATION ACT**

**POSITION:** NCCBI opposes the position of the North Carolina Department of Labor's Workplace Retaliatory Discrimination Office (WORD) that it is unlawful for a private employer to terminate an employee pursuant to a facially neutral leave of absence policy where the absence was due to a work related injury. NCCBI believes that WORD's contention that this is a violation of the provisions of North Carolina's Retaliatory Employment Discrimination Act (REDA) is erroneous.

**EXPLANATION:** Historically, private sector employers in North Carolina have had the right to establish non-discriminatory leave of absence policies which provide for a maximum time that any employee for any reason can be absent. These policies are referred to as "6-12 policies" by the Department of Labor because they typically provide for a maximum time for leaves of absence of six (6) to twelve (12) months, after which the employee will be automatically discharged due to the excessive absence, regardless of the reason for the absence.

In 1994, a complaint was filed with WORD claiming that an employee was terminated in violation of the individual's Workers' Compensation rights under Chapter 97 of the North Carolina General Statutes. WORD found reasonable cause to believe that the allegation of prohibited discrimination was true. WORD contended

that an employee's termination for failure to return to work after a specified period of time is a violation of REDA, if the reason for the employee's absence is related to the exercise of a right under one of the statutes listed in REDA, even where the policy is facially neutral.

N.C.G.S. Section 95-241 (b) provides as affirmative defense for employers where the employer "would have taken the same unfavorable action in absence of the protected activity of the employee." The affirmative defense has been recognized in at least one court decision. In *Watkins v. Martin Mills, Inc.*, the United States District Court for the Middle District of North Carolina granted summary judgment, finding in part that the company's policy of automatically terminating employees who exceeded its maximum allowable leave was an affirmative defense to a REDA action. In *Martin Mills* the maximum period was twelve (12) months.

The establishment of non-discriminatory maximums for leaves of absence are consistent with the mandates of both federal and state anti-discrimination laws. Such policies are necessary for North Carolina businesses to be able to operate in an effective and predictable manner. Requiring companies to leave positions open for extended, and possibly very lengthy periods of time, can cause unreasonable hardships on a business, especially small businesses where staffing is necessarily limited.

## **PROMOTING EMPLOYMENT REFERENCE QUALITY**

**POSITION:** NCCBI supports the giving and receiving of complete employment references between employers and prospective employers.

**EXPLANATION:** NCCBI applauds the 1997 action of the General Assembly which instituted protection for employers sharing truthful, complete employment references. However, we remain concerned that the current law does not offer enough protection to address the concerns of employers who are increasingly wary of providing job references to other employers. The fear of litigation over slander and libel prompt most employers to provide only the barest information. These "neutral references" (dates of employment and job title held) do nothing to help the laid off worker prove their skills and qualifications for a new job. Neutral references also mask serious problems which are relevant at the new job site, including past violent acts and drug policy violations.

NCCBI supports legislation providing absolute immunity for employers sharing truthful employment references.

## **WAGE GARNISHMENT**

**POSITION:** NCCBI believes that employers should not be unnecessarily involved in their employees private business affairs or be burdened with the administrative time and expense of collecting debts for their employees creditors and forwarding payroll payments to various clerks of court throughout the state. For this reason, NCCBI opposes any expansion of existing North Carolina law regarding when creditors may garnish an employee's wages in order to collect a debt.

**EXPLANATION:** Currently, garnishment is allowed in North Carolina for the recovery of child support and public debts, such as taxes and charges for hospital and ambulance services. Under these laws, North Carolina employers are burdened by the administrative time and expense required to carry out garnishment orders. Expansion of existing North Carolina law to allow creditors to garnish an employee's wages to satisfy judgments would cause additional undue administrative burden and expense for employers. No administrative fee would be adequate to reimburse employers for the administrative burden and expense or the negative impact on the employer/employee relationship caused by withholding garnished wages. The collection of such a fee, in and of itself, poses a real risk of causing animosity by employees toward their employers. Moreover, employers are opposed to becoming unnecessarily involved in the private business affairs of their employees, which also will cause instability in the employer/employee relationship, to the extent of encouraging "job hopping" by employees. NCCBI believes any expansion of the garnishment laws in North Carolina would unduly burden all employers, but that small employers in particular would suffer a hardship by having to invest administrative time to garnish wages and to bear the costs of implementing the garnishments.

# LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI TAXATION AND FISCAL POLICY COMMITTEE

## DEFINING “DOING BUSINESS” IN NORTH CAROLINA

**POSITION:** NCCBI opposes efforts by the North Carolina Department of Revenue to expand, by rule-making, the meaning of the term “doing business” for purposes of corporate income tax liability. Such proposed rule-makings effect a tax increase by administrative fiat, and without permission of the North Carolina General Assembly. The taxing power is the sole prerogative of the General Assembly and should not be usurped by administrative agencies.

NCCBI supports the legislative enactment of a statutory physical presence standard for what constitutes “doing business” in North Carolina for tax purposes. Such a standard is consistent with existing state and federal law limiting the tax powers of states, and will avoid costly and protracted litigation concerning North Carolina’s taxing power. A more expansive definition of the term “doing business” would frustrate the economic growth of North Carolina by impairing the ability of existing North Carolina companies to obtain capital and undermining North Carolina’s existing reputation as a state dedicated to the maintenance of a favorable business climate.

**EXPLANATION:** Traditionally, North Carolina has attempted to impose corporate income tax only on companies that have a physical presence in this State. In 1992, the North Carolina Department of Revenue, by administrative rule-making, expanded the class of companies subject to taxation in North Carolina to include companies that had licensed the use of intangible assets in North Carolina, including trademarks, tradenames, computer programs, and copyrights. The 1992 rule foreshadowed still more aggressive efforts by the Department in 1996, and again in 1998, to tax companies with interests in North Carolina as ethereal as loans to North Carolina residents and security interests in property located in North Carolina. The Department’s steady march from taxation based on physical presence to its new, legally untested, “economic presence” standard was halted in both 1996 and 1998 by a broad coalition of companies alarmed by these bureaucratic efforts. At the request of concerned parties, the North Carolina General Assembly in 1998 directed its specially constituted Revenue Laws Study Commission to review the issue of when a company is “doing business” in North Carolina and to recommend appropriate action.

The Department of Revenue’s efforts to tax companies based on their “economic interests” in this State are flawed in three important ways. As an initial matter, by expanding the scope of state taxing authority through administrative fiat, the Department attempts to usurp the legislative power of the General Assembly and implement a tax increase without a vote of the people’s popularly elected representatives. A study by the North Carolina Office of State Budget and Management shows that the rule-making proposed by the Department in 1998 alone would increase taxes and related compliance costs by some \$62 million per year. Such a tax increase should plainly be beyond the prerogative of administrative agencies, and if implemented at all, should be based on solemn deliberation by the legislature.

Rules proposed previously by the Department of Revenue pose a significant threat to North Carolina’s stature as a national center for economic development that is well known for its favorable business climate. By extending revenue agents’ reach, the Department’s proposed “economic presence” taxing standard would discourage national lenders and other types of investors from loaning money to North Carolina businesses or collateralizing other transactions with property in North Carolina. Under the proposed rules, such lenders who would otherwise have no taxable connection to North Carolina could become liable for millions in taxes and incur substantial compliance costs simply because of their willingness to provide financial support to growing tar heel firms. Just as important, the “economic presence” taxing standard previously proposed by the Department of Revenue would place North Carolina among a clear minority of states that aggressively assert the right to tax companies with no physical presence within their borders. Such “tax aggressor” states are plainly not the jurisdictions where new and expanding businesses will want to invest.

Finally the “economic presence” taxing rules sought previously by the Department of Revenue press the limits of the constitutional authority to tax established under both state and federal law. Any attempt to impose a

new “economic presence” taxing standard would place North Carolina at the precipice of constitutional boundaries on taxation and would undoubtedly provoke protracted and expensive litigation testing the power of the State to reach business interests only remotely connected to North Carolina. In this regard, the aggressive taxing policy promoted by “economic presence” advocates could easily subject North Carolina to the same types of multimillion dollar tax refund judgements won by intangibles taxpayers and state and federal retirees in recent years.

NCCBI therefore supports legislative enactment of a statutory physical presence standard that maintains North Carolina’s traditional rule for determining when businesses are “doing business” in this state. A statutory physical presence standard will:

- Provide North Carolina businesses with a stable, predictable, fair and economically competitive business climate.
- Avoid costly and protracted litigation testing the constitutional limits of the state’s ability to tax companies on an economic presence nexus theory.
- Provide a bright-line test to promote fair and even-handed imposition of the North Carolina corporate net income tax.
- Stop the Department of Revenue from attempting to bypass the Legislature to effect a tax increase and keep the law-making in the General Assembly.
- Prevent the Department from increasing the cost of borrowing and doing business in the state and causing a chilling effect on the State’s business climate, economic competitiveness and future economic growth.

## **PROPERTY TAX EXEMPTIONS FOR CONSTRUCTION IN PROGRESS AND PRODUCT SAMPLES**

**POSITION:** North Carolina counties should not subject construction in progress to the business personal property tax. Further, product samples should be considered as inventory and should be exempt from the property tax.

**EXPLANATION:** North Carolina counties are taxing construction in progress at 100% of its cost throughout the construction phase. This approach, while of questionable validity under North Carolina’s law, creates a disincentive for businesses for building or expanding in North Carolina. In addition, it is creating administrative difficulties for counties and taxpayers. Finally, the inconsistent approaches used to tax this property among North Carolina’s 100 counties and even within a county are creating a sense of unfairness and lack of uniformity in our taxing system.

“Construction in progress” is the accounting category for property while it is being built and prior to its being used. Depending on the size of the project, construction in progress can be accounted for on the books of a company for several years. Several counties are taking the position that construction in progress should be taxed at 100% of its cost until the asset is placed in service. Once it is placed in service, then it can be depreciated, but prior to that, it is a continually increasing aggregation of costs.

The approach of 100% of cost is not supported by our statutes which require that applying property be taxed at its true value in money or money’s worth. This definition is difficult for counties and taxpayers alike, as they struggle to determine the true value of a partially completed facility. Thus, if this property is to be taxed at all, a simple, fair method of assessing the true value for construction in progress is needed.

But more fundamentally, this property should not be taxed at all, prior to its producing income. To do so is discouraging businesses from constructing additional facilities in North Carolina. Such practice is not used by our surrounding states. Therefore, a reduction or elimination in the taxation of construction in progress would be advantageous for future economic development in our State.

As for product samples, these are the same ingredients as inventory products but packaged in smaller containers. Since the samples are not sold, they are not considered inventory. Hence the inventory exemption for the State’s personal property tax does not apply. However, since the product samples are similar to inventory, it makes sense to extend the property tax exemptions to them as well.

## **CONTINGENT FEE AUDITS**

**POSITION:** State and local auditors and audit advisors should not be paid on a contingency fee basis in any form.

**EXPLANATION:** NCCBI supports tax and other audits by governmental entities. Approximately 27 North Carolina counties have performed property tax audits of their taxpayers using outside auditing firms being paid as much as 35% of the additional taxes assessed as a result of their audits. Specifically, these auditors are paid fees based on the amount of additional taxes generated by their audits.

On December 3, 1993, the North Carolina Supreme Court held that contingent fee property tax audits are permissible in North Carolina. The rationale of the Court was that the Court could not make the public policy concerning these audits. Instead, the Court said that the Legislature of North Carolina should determine whether permitting a property tax audit with the auditor's being paid a percentage of the additional taxes generated by the audit is acceptable under the public policy of North Carolina.

Permitting audits of taxpayers with another private citizen being paid a percentage of the additional taxes or amount generated by the audit services is contrary to the public good. Such audits create a hostile taxing environment and a sense of unfairness among taxpayers.

North Carolina's Supreme Court decision allowing contingent fee audits has received national attention and has sent a message to businesses that the State's taxing system is hostile to business. Outlawing contingent fee audits will still permit audits of taxpayers, but will indicate North Carolina's desire to treat all taxpayers fairly.

## **REMOVE INVENTORIES FROM FRANCHISE TAX BASE**

**POSITION:** The North Carolina General Assembly should reform the state franchise tax by removing inventories/work-in progress from Schedule D.

**EXPLANATION:** This reform of the franchise tax on inventories will assist companies which engage in high, value-added manufacturing and encourage the types of jobs that we as a state most want to retain and attract. North Carolina is one of only three states that taxes inventories as a part of the franchise tax. This puts our state at a great disadvantage when we are trying to recruit and retain high-wage employers with expensive or large inventories. It also makes it more difficult for new businesses to make a profit, when they must pay a franchise tax based on their inventory.

The manufacturing industry in our state has always been a source of economic stability. We need to nurture and encourage this high-value part of our economy.

## **KEEP DOUBLE WEIGHTED SALES FACTOR**

**POSITION:** North Carolina should retain the double-weighted sales factor for use in computing corporate income tax liability of multistate corporations.

**EXPLANATION:** From the 1950's, North Carolina has used the three-factor formula for levying income taxes on multistate corporations doing business in the state. The three factors are (1) the proportion of a company's sales in the state, (2) the proportion of its total payroll paid in North Carolina, and (3) the value of its property in the state as a percentage of its total property. Prior to 1989, each of the three factors carried equal weight.

In the 1988 session, the General Assembly passed House Bill 2372 which changed the corporate tax law to include a "double-weighted" sales formula for use in computing state income tax liability. Under the double-weighting concept, the sales proportion is counted twice in the formula for computing a company's North Carolina income tax liability, while property and payroll are only counted once.

NCCBI believes that the General Assembly was correct in making this change, based on its recognition of the steps being taken by other states that compete with North Carolina for new industry. Passage of this measure helped to offset the effect of corporate tax rate differentials. The double-weighted sales formula benefits companies that have a significant portion of their plants and payroll in North Carolina but sell into the nation-wide market. It encourages multistate manufacturers and distributors to invest in our state, and it is an incentive for such companies that are already here to expand their present investments.

## **MACHINERY AND ENERGY SALES TAX RATES**

**POSITION:** North Carolina should not increase the rate or remove the \$80 cap on the tax on sales of machinery. Additionally, the sales tax on utilities used in manufacturing and farming needs to be reduced from 2.83 percent rate to one percent to be consistent with the tax on machinery and equipment.

**EXPLANATION:** There are no states contiguous to North Carolina that impose a sales tax on machinery and equipment used in manufacturing. This tax has not been opposed by business because of an \$80 cap which the General Assembly wisely placed on this tax. The moderation with which this tax has long been applied has helped North Carolina's attractiveness to industry.

When a company is considering North Carolina as a place to locate or expand, it looks at many factors: transportation, availability of skilled labor, wage rates, quality of life, utilities, educational and cultural opportunities, land and building costs, and overall tax climate. When it is building a plant, it must equip that facility with the tools that will enable that company to produce the goods and services profitably. A tax on the purchase of machinery, without the \$80 cap could be significant enough to cause a company not to build a facility in the state-resulting in a loss of jobs and tax revenues.

Likewise, utilities (electricity) are a major cost to manufacturers and farmers. All the southeastern states, except North Carolina, exempt electricity and natural gas used in manufacturing from the sales tax. For North Carolina to be competitive, this tax rate should be reduced to one percent.

Larger companies and some company divisions often operate under a system called "contention manufacturing." Under this system, divisions of the same company compete against other divisions and plants within the company for the right to manufacture a given product. Decisions are based on cost, quality, and other criteria. Competition is often very close. If the cost for purchasing equipment to manufacture the product or the cost of utilities are higher for a plant in North Carolina because of these taxes, this fact may tip the scale against the product's being manufactured in our state.

Furthermore, a tax on machinery to manufacture goods that ultimately will be sold at retail contradicts the notion of a tax aimed only at retail sales themselves.

From an economic standpoint, taxing the tools or utilities of production will only serve to decrease the level of economic activity and growth in North Carolina, and will decrease the level of revenues to the State in the long run.

## **CHANGE THE NET ECONOMIC LOSS (NEL) CARRYOVER TO A NET OPERATING LOSS (NOL) CARRYOVER**

**POSITION:** The North Carolina General Assembly should conform the state's current net economic loss (NEL) calculation to the federal net operating loss (NOL) calculation. Although conformity to the former federal 15-year carryover period passed previously by the General Assembly was a good first step, North Carolina will not be truly competitive with its neighboring states until the NEL calculation is replaced with the NOL calculation currently in use by the federal government and most state departments of revenue.

**EXPLANATION:** To more accurately reflect normal business cycles and long-range planning done by business enterprises, the federal tax code and most state tax codes allow companies to deduct current losses from future (and past) earnings. These net operating loss (NOL) carryover provisions recognize that the



annual tax reporting period is artificial. They are designed to prevent unfairly penalizing companies with year-to-year fluctuations in earnings and capital investment.

North Carolina is the only state in the nation that requires businesses to use a net economic loss (NEL) calculation rather than a net operating loss (NOL) calculation for purposes of deducting business losses in future years. In most other states, a business with a net operating loss may deduct those losses against income in future (and in some cases past) years. In North Carolina that business with the same net operating loss must add back nontaxable income (for example, dividends from subsidiaries) to calculate its NEL. Only if its deductions exceed both taxable and nontaxable income can the North Carolina business offset the loss against income in future years.

The unique North Carolina rule places the State at a distinct competitive disadvantage against other states, particularly neighboring states (e.g., Alabama, South Carolina, Virginia, Delaware, Kentucky, Florida and Tennessee), all of which use an NOL computation. Specifically, the NEL rule:

- Penalizes the use of subsidiaries in corporate structure – Because the North Carolina rule forces companies to add back dividends from subsidiaries in the NEL calculation, it adds significant costs to a company's ability to create an optimal corporate structure.
- Discourages establishment of corporate headquarters in North Carolina - The tax penalty for using corporate subsidiaries creates a disincentive to locate the headquarters operations of a corporate group (and its high-salary jobs) in North Carolina.
- Creates additional administrative and compliance burdens – Taxpayers in North Carolina are forced to track and calculate the NEL carryforward separately from federal and other state NOLs, thereby creating an additional and unnecessary compliance burden for North Carolina taxpayers.

In short, by limiting carryforward losses to net economic losses, North Carolina's unique NEL rule places it at a competitive disadvantage with most other states, particularly its neighbors.

## **CONTINUE N.C. BUDGET REFORM**

**POSITION:** The General Assembly should continue reforming the State's budget process begun in 1991. Fiscal expenditures should not be based on revenue projections, but rather should be based on some other measure such as the amount of prior calendar year revenues, plus growth and inflation, as an example. The rainy day fund should be continued for unanticipated needs. Moreover, the budget should be approved to meet statutory deadlines for local governments and local school systems.

**EXPLANATION:** Revenues for the State of North Carolina have increased each year, even in times of recession. The increases, however, have not always been uniform. Budget estimates based on the anticipated percentage growth in State revenues have fluctuated greatly. With the present size of the State budget, even a 1% error in the revenue estimates can be a big problem.

The natural tendency in the political process is to keep taxes as low as possible, and to provide the most services possible. Once a program has been established, there is great reluctance to ever dismantle it, especially after staff is hired, and the program develops an even wider constituency. In the minds of those who administer and who benefit from the program, it becomes almost impossible to remember the time when the program did not exist. The State has made some efforts to review programs on a regular basis and cut out unnecessary programs and positions. However, State government continues to grow and efforts to streamline government must continue to be improved.

## RESEARCH AND DEVELOPMENT TAX CREDIT

**POSITION:** NCCBI recommends that the General Assembly pass legislation to create a globally competitive research and development tax credit. NCCBI believes that taxpayers should have the option of electing a fixed percentage of 5% of their actual, yearly research and development expenditures performed in North Carolina as a credit against North Carolina income and franchise taxes, rather than the 5% of the apportioned qualified research expenses determined under IRC 41 or the alternative incremental method. In addition, NCCBI recommends that companies conducting their Research & Development at a North Carolina research university should receive a flat 25% credit against North Carolina income and franchise taxes.

**EXPLANATION:** Currently, NC General Statute 105-129.10 allows taxpayers a tax credit in the amount of 5% of the qualified research expense as determined under IRC sec. 41. The calculations prescribed in sec. 41 utilize base year expenditures and a percentage of annual gross receipts as thresholds in determining the amount of R&D credit to which a company is entitled. This calculation of credit “penalizes” start-up and certain large companies which do not grow research expenditures relative to sales growth. North Carolina recently passed legislation adopting the federal alternative method provisions, a federal change recognizing the arbitrary nature of the then existing federal credit provisions.

Current law fails to reward relative increases in research conducted in North Carolina. For example, if a company were to move \$100 million in research expenses from another state into North Carolina, but still not exceed the federal limitations in total annual research expenditures, such company would receive no credit in North Carolina.

Taxpayers should be allowed to receive a flat percentage of their yearly R&D expenditures, occurring in North Carolina, as a tax credit. Such credit should be allowed to carry forward for a period of at least 15 years. The proposed change in this tax credit provision would remove the uncertainty for taxpayers doing business in the State, because all qualified expenses incurred in this State during the taxable year would be eligible for the research tax credit. Companies incurring research expenditures cross all industry lines; therefore, this change in the R&D credit would benefit taxpayers without being discriminatory or targeting specific industries. Consequently, companies would realize more value from their R&D activities and would have more incentive to increase such activities in this State. Since companies bear an inherent risk of being unsuccessful when developing new products, less constrained R&D budget could result in pursuit of previously unfeasible ideas. The public at large could benefit from safer, more advance products being brought to market faster, and North Carolina will benefit from increased high wage employment – the largest component of qualifying research expenditures.

Allowing an aggressive flat percentage against a company's North Carolina R&D activities would allow North Carolina to have a competitive state tax credit compared with other states. This change could potentially attract new businesses and prompt out-of-state companies to relocate to North Carolina.

## MODEL UNCLAIMED PROPERTY ACT AMENDMENTS

**POSITION:** The North Carolina Escheats and Abandoned Property Act should be amended to remove as unclaimed property all business to business transactions including unclaimed checks and remove the ability to hire contingent fee auditors to perform unclaimed property audits.

**EXPLANATION:** In 1999, the North Carolina Escheats and Abandoned Property Act was amended to include significant portions of the Model Unclaimed Property Act of 1995 (the “Model Act”). Although the Legislature made several important changes to the Model Act, the Model Act that passed contained two provisions which should be changed in order to conform to modern business practices and to be consistent with the trend of many states in the administration of unclaimed property.

The 1999 amendment removed credit balances from the definition of unclaimed property, but failed to eliminate other transactions between businesses such as uncashed checks. The administrative cost of determining whether property has been abandoned on business-to-business transactions, in most cases, is well in excess of the amount that should be remitted to the Treasurer as unclaimed property. Businesses maintain

sophisticated record keeping systems and know when they are due a payment. Most uncashed checks result from businesses failing to place a stop payment on a check or the account was settled in another form, such as a credit on another transaction.

The Model Act gives the State's Treasurer the discretion to administer unclaimed property laws, particularly with respect to the hiring of auditors and attorneys on a contingent fee basis. Consistent with NCCBI's position regarding contingent audits, the Treasurer should not be allowed to hire auditors or attorneys on a contingent basis.

## **SALES TAX DISCOUNT**

**POSITION:** The sales tax discount to sales tax collectors and remitters should be reinstated in an amount that is fair and equitable within the revenue available.

**EXPLANATION:** Prior to changes enacted in 1987, retail merchants were allowed to retain a small portion of the sales tax they collected to defray the costs they incurred in helping the State administer the sales tax. This discount was repealed in 1987 when the inventory tax was repealed but most merchants did not gain any net benefit because at the same time the maximum corporate income tax rate was increased by 1%. The corporate income tax rate was increased again in 1991 then decreased in 1996, 1997 and 1998. However, it has not been reduced to below the 1991 level.

## **STREAMLINED SALES TAX LEGISLATION**

**POSITION:** The Streamlined Sales Tax project is an important endeavor, which will result in legislation that will need to be monitored and analyzed to protect current sales and use tax exemptions.

**EXPLANATION:** In the 2000 legislative session, the General Assembly enacted legislation to participate in the Streamlined Sales Tax Project. While the initial legislation called for participation in the project, it will result in additional legislation to bring uniformity between the participating states. For all types of commerce, this project is intended to simplify and modernize sales and use tax administration for both Main Street and remote sellers. One of the key elements of this project will be to develop a multistate uniform definition within a tax base. Each state will still be able to enact legislation defining if a tax base is taxable or exempt; however, a multistate uniform definition may result in items within a tax base that are currently exempt in North Carolina, becoming taxable under the multistate definition. NCCBI supports simplifying and modernizing sales and use tax administration, but wants to insure that current exemptions are not lost as a result of a multistate uniform definition of a tax base.

## **Legislative Conference Speakers**



Lieutenant Governor Beverly  
Perdue



House Minority Leader Leo  
Daughtry

# LEGISLATIVE POSITIONS ADOPTED BY THE NCCBI TRANSPORTATION COMMITTEE

## TRANSPORTATION PLANNING & FUNDING

**POSITION:** North Carolina's Transportation Program is at a crossroads and currently faces crisis shortfalls in each mode.

NCCBI supports:

- An increase in dedicated transportation funding for all modes to meet current and future needs.
- Termination of the \$170 M annual transfer from HTF to the General Fund (and any other transfers to non-transportation uses). These transportation funds should be used exclusively for transportation purposes.
- Implementation of the approved NC-DOT Transportation Improvement Program at a schedule that will 1) adequately address current overly-congested corridors, 2) allow corridors to develop that are needed for economic growth, and 3) maintain the level of mobility necessary for our citizens. Recognizing that transportation funds are needed for congestion mitigation as well as economic development and growth in less developed areas, these needs should not be mutually exclusive or in competition with each other; both needs are legitimate. Both needs are under-programmed, under-funded, and, without attention, will deter our state from providing the quality of life, mobility, climate for responsible growth, and environmental atmosphere desired by our citizens.
- Alternative and innovative methods of funding for all modes of transportation

**EXPLANATION:** North Carolina has traditionally enjoyed a transportation system providing cost-effective, convenient, flexible and efficient movement of people, goods and services throughout the state. The quality of the system is approaching a crisis condition. Improvement of this transportation system is essential to our economic future. A top priority should be for the state to continue to seek to maximize the return of federal transportation dollars to enhance economic development, or the state will not be able to keep pace with competing states' transportation systems. The state should encourage research and development projects at state universities which offer meaningful options for the future as the state's population grows. Planning should recognize the continuing benefits and needs of existing transportation systems, and the need to develop appropriate inter-modal systems.

## HIGHWAY SAFETY AND MAINTENANCE FUNDING

**POSITION:** NCCBI supports increased funding for roadway and bridge safety and maintenance to help preserve and protect our transportation system in North Carolina. The current level of maintenance funding is inadequate to meet the needs of our 78,000 mile state-maintained system. As the roadway system continues to grow, that need also will continue to grow.

**EXPLANATION:** Roadway safety and maintenance funding allocations have not kept pace with the growth in maintenance responsibilities. Annual maintenance and pavement resurfacing funding represents a "shortfall of approximately \$300 million – of which \$100 million is for pavement resurfacing." Current funding for roadway safety and bridge maintenance has not been adequate to address the roadway and bridge safety and maintenance backlog. There is no provision for maintenance of new construction funded out of the Highway Trust Fund.

Deteriorating roadway and bridge conditions are a serious safety issue that must be addressed. We cannot afford to ignore these needs. Delayed repairs and maintenance result in increased deterioration which, in turn, will result in increased accidents and damage to motor vehicles. In the long run, the taxpayer pays more if safety and maintenance are not addressed adequately.

## COORDINATION AMONG REGULATORY AGENCIES

**POSITION:** NCCBI supports legislation requiring state and federal agencies to better coordinate their decision-making processes regarding transportation and economic development. NCCBI also supports setting a specific timeframe for environmental and historic preservation decisions regarding transportation and economic development projects.

**EXPLANATION:** The environmental permit approval stage for transportation and economic development projects has become long and complicated. Communities, local elected leaders and business leaders are unable to, in a timely manner, plan for development. Dates listed for completion of projects in the N.C. Transportation Improvement Program cannot be relied upon.

Operating under various federal and state environmental and historic preservation laws, other state and federal agencies delay projects for years and add millions of dollars to the estimated cost of the project. A process needs to be established by the N.C. Legislature for each phase of the environmental permit approval stage of a project. The phases should be listed as:

1. Purpose and Need of the Project
2. Study Area of the Project
3. Alternatives for the Project
4. One Alternative Selected
5. Both Federal and State Regulatory Permits Issued

Step 1, purpose and need, should be established by the region where the project is to be built. Steps 2 through 5 should be a part of a merger team agreement, made up of the various affected state and federal agencies. Once the merger team reaches and agrees upon a step, that step cannot be revisited. The steps should be sequential. A timeframe should be established for each step.

NCCBI believes that additional costs and lengthy delays can be avoided by requiring agencies to coordinate their decisions in a specific timeframe. This change will save money and time as well as enhance economic development, environmental concerns and historic preservation.

## NORTH CAROLINA STATE PORTS

**POSITION:** NCCBI encourages the North Carolina legislature to appropriate funds on an ongoing basis to the North Carolina State Ports Authority sufficient to maintain and improve the Ports' marine terminals and related infrastructure.

We recommend that the Legislature appropriate the State's share of the funding as required for the federal navigation improvement project that would deepen the Cape Fear River navigation channel. Deepening the Cape Fear is essential for the Port of Wilmington to remain competitive and serve North Carolina's business and industry into the next century. We further recommend that highway projects necessary for improved access to both State Ports be identified, included in the State's Transportation Improvement Program (TIP), and assigned the highest priority for implementation. NCCBI recommends the removal of the Sunset Clause of the North Carolina State Ports Tax Credit Legislation that is due to expire February, 2001.

**EXPLANATION:** North Carolinians are just beginning to realize the tremendous potential of our State Ports to access global markets and foster economic development throughout North Carolina. The strategic location of our Ports at Morehead City and Wilmington allows North Carolina business and industry to better compete in the global marketplace through savings on inland transportation costs. For example, North Carolina customers shipping containerized cargoes accrue an estimated \$19 million in savings on inland transportation annually by using the Port of Wilmington, instead of other gateways. The construction activity of Cape Fear River Deepening Project was begun on November 6, 2000. The project will be complete by the first quarter of 2003 - a timetable that is critical to steamship lines serving North Carolina's importers and exporters from the Port of Wilmington.

The Ports Authority's reinvigorated partnership with the State has resulted in nearly \$44 million in appropriations for the last 7 years. Most of this money has gone for major maintenance projects (58%) with the balance used for new capital projects. These appropriations have yielded substantial benefits in the ability of North Carolina's ports to better serve our State's business and industry. However, just as at ports throughout the country, the huge economic returns from the operations of our ports require continued investment for its realization. The Ports Authority's defined six-year program based on this revitalized partnership has been submitted to the State along with its 2000/2001 Biennium Budget request to continue State capital contributions for new construction projects and repairs and renovations (R&R) projects. It should be noted that new capital construction will be joint ventured with private sector interest whenever possible.

The North Carolina State Ports Tax Credit has been a strong tool to increase awareness of the importance of North Carolina's ports to business and industry in the state. Since its inception in 1992, 77 companies have received certification for a total of \$5,476,000 in credits for cargo movements. This \$5.47 million in tax credit is related to \$4.605 million dollars, and 1,853,855 tons of cargo generated as a result of business moving increased volumes of cargo through our ports, incented by the tax credit. The State Ports Tax Credit allows taxpaying importers and exporters to take credit against incremental increases based on a running 3 year average of movements through North Carolina's Ports. Therefore, it encourages both increased volume movements and new business through our terminals. This additional tonnage resulted in "direct" economic impact of \$46.363 million in state and local taxes, and 10,500 jobs. Adding indirect and induced factors, the results are \$86.9 million in taxes generated and 23,652 jobs. (source: Dr. Gary Shoesmith, Wake Forest University)

## **RAIL INFRASTRUCTURE**

**POSITION:** NCCBI supports long range transportation planning that recognizes the value of the state's rail system for continued business success, economic growth, and recruitment of new industry. Planning should include support for the existing rail freight system (including industrial access programs), infrastructure improvements that will lead to decreased traffic congestion, rail facility relocation as needed for economic development, highway/grade crossing safety, and railroad corridor preservation. NCCBI encourages the continuation of a study committee of the General Assembly to address rail issues.

**EXPLANATION:** North Carolina enjoys a transportation network that provides a cost effective, convenient, flexible, and efficient means for movement of people, goods, and services throughout the state. NCCBI believes increased rail infrastructure can greatly improve the state's ability to deliver high quality of life, transportation alternatives with the least impact on the environment and job convenience for the state's employment population to go to and from work. A top priority should be for the state to continue to seek to maximize the return of federal transportation dollars to enhance economic development, or the state will not be able to keep pace with competing states' transportation systems. The state should encourage research and development projects at state universities which offer meaningful options for the future as the state's population grows.

## **MOTOR VEHICLE SAFETY INSPECTIONS**

**POSITION:** NCCBI supports an effective motor vehicle safety inspection program and opposes efforts to eliminate such a program. NCCBI supports amending the program to exclude emission inspection requirements for vehicles up to 3 years old.

**EXPLANATION:** NCCBI opposes abolishing motor vehicle safety inspections in North Carolina for the following reasons. First, the inspection program helps to keep North Carolina's roads safer and traffic fatalities down by keeping unsafe vehicles off of the highway. Second, the inspection program helps to reduce air pollution by decreasing mobile source emissions. However, emission inspections for new vehicles is a waste of time and money. Very few new vehicles fail the tests, therefore, they should be excluded from the testing requirements.