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ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 1 of 43

Comm. Sub. [YES]
Amends Title [YES]
PCS to Fourth Edition

Date JUN 11 2009, 2009

Representative Luebke

1 moves to amend the bill on page 1, lines 2-4, by rewriting the lines to read:

2
3 "AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS
4 OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES; TO PROVIDE FOR
5 TWO NEW PERMANENT UPPER-INCOME TAX BRACKETS WITH BEGINNING
6 THRESHOLDS AT TWICE AND FIVE TIMES THE CURRENT HIGHEST BRACKET
7 EFFECTIVE JANUARY 1, 2009; TO PERMANENTLY PROVIDE FOR MANDATORY
8 COMBINED REPORTING FOR CORPORATE INCOME TAX PURPOSES EFFECTIVE
9 JANUARY 1, 2010; TO PERMANENTLY EXPAND THE CORPORATE FRANCHISE
10 TAX BASE TO INCLUDE ALL LIMITED LIABILITY BUSINESS ENTITIES
11 EFFECTIVE JANUARY 1, 2010; TO PERMANENTLY MODIFY THE CORPORATE
12 INCOME TAX APPORTIONMENT FORMULA BY REQUIRING THAT SALES BE
13 INCLUDED IN THE NUMERATOR OF THE SALES FACTOR IF THE PROPERTY IS
14 SHIPPED FROM THIS STATE AND THE TAXPAYER IS NOT TAXABLE IN THE
15 STATE WHERE THE PROPERTY IS DELIVERED, EFFECTIVE JANUARY 1, 2010;
16 TO PERMANENTLY CONFORM THE EXEMPTION FOR FINANCIAL
17 INSTITUTIONS FOR INTEREST EXPENSE THAT IS ALLOCABLE TO TAX-
18 EXEMPT INTEREST INCOME TO THE GENERAL FEDERAL TREATMENT OF
19 THIS EXPENSE EFFECTIVE JANUARY 1, 2010; TO PERMANENTLY INCREASE
20 THE STATE GENERAL SALES AND USE TAX RATE BY ONE-QUARTER
21 PERCENTAGE POINT EFFECTIVE AUGUST 1, 2009; TO PERMANENTLY IMPOSE
22 THE STATE AND LOCAL SALES AND USE TAX ON SERVICE CONTRACTS AND
23 ON REPAIR, MAINTENANCE, AND INSTALLATION SERVICES FOR TANGIBLE
24 PERSONAL PROPERTY EFFECTIVE OCTOBER 1, 2009; TO PERMANENTLY
25 IMPOSE THE STATE AND LOCAL SALES AND USE TAX ON LOCAL AND
26 INTERSTATE COURIER SERVICES EFFECTIVE OCTOBER 1, 2009; TO
27 PERMANENTLY IMPOSE THE STATE AND LOCAL SALES AND USE TAX ON
28 SALES OF DIGITAL PRODUCTS EFFECTIVE OCTOBER 1, 2009; TO
29 PERMANENTLY REQUIRE A REMOTE SELLER TO COLLECT SALES TAX WHEN
30 THE SELLER ENTERS INTO AN AGREEMENT WITH ONE OR MORE STATE
31 RESIDENTS PROVIDING FOR A COMMISSION WHEN THE RESIDENT REFERS
32 CUSTOMERS TO THE SELLER AND THE SELLER HAS GROSS RECEIPTS OF AT
33 LEAST TEN THOUSAND DOLLARS ANNUALLY FROM SALES TO ALL



* S 2 0 2 - A S V X F - 2 1 - V - 6 *

TITLE CHANGE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 2 of 43

1 CUSTOMERS REFERRED TO THE SELLER BY ALL SUCH RESIDENTS,
2 EFFECTIVE WHEN IT BECOMES LAW; TO PERMANENTLY IMPOSE THE STATE
3 AND LOCAL SALES TAX ON MOVIES AND OTHER AMUSEMENTS IN LIEU OF
4 THE PRIVILEGE TAXES CURRENTLY IMPOSED ON THESE ACTIVITIES
5 EFFECTIVE OCTOBER 1, 2009; AND TO PERMANENTLY INCREASE THE EXCISE
6 TAX RATE ON SPIRITUOUS LIQUOR BY ONE AND ONE-HALF PERCENTAGE
7 POINTS EFFECTIVE AUGUST 1, 2009.";

8
9 and on page 261, lines 48-49, by inserting the following between those lines:

10
11 **"PART XXVIIA. INDIVIDUAL INCOME TAX CHANGES**
12 **TWO NEW TAX BRACKETS FOR UPPER INCOME**

13 **SECTION 27A.1.(a)** G.S. 105-134.2(a) reads as rewritten:

14 (a) A tax is imposed upon the North Carolina taxable income of every individual. The
15 tax shall be levied, collected, and paid annually and shall be computed at the following
16 percentages of the taxpayer's North Carolina taxable income.

17 (1) For married individuals who file a joint return under G.S. 105-152 and for
18 surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	\$21,250	6%
\$21,250	\$100,000	7%
\$100,000	NA \$200,000	7.75%
<u>\$200,000</u>	<u>\$500,000</u>	<u>8.25%</u>
<u>\$500,000</u>	<u>NA</u>	<u>8.5%</u>

26
27 (2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	\$17,000	6%
\$17,000	\$80,000	7%
\$80,000	NA \$160,000	7.75%
<u>\$160,000</u>	<u>\$400,000</u>	<u>8.25%</u>
<u>\$400,000</u>	<u>NA</u>	<u>8.5%</u>

35
36 (3) For unmarried individuals other than surviving spouses and heads of
37 households:

Over	Up To	Rate
0	\$12,750	6%
\$12,750	\$60,000	7%
\$60,000	NA \$120,000	7.75%
<u>\$120,000</u>	<u>\$300,000</u>	<u>8.25%</u>

43

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 3 of 43

1 \$300,000 NA 8.5%
2 (4) For married individuals who do not file a joint return under G.S. 105-152:
3

	Over	Up To	Rate
4			
5	0	\$10,625	6%
6	\$10,625	\$50,000	7%
7	\$50,000	NA \$100,000	7.75%
8	<u>\$100,000</u>	<u>\$250,000</u>	<u>8.25%</u>
9	<u>\$250,000</u>	<u>NA</u>	<u>8.5%</u>

10 **SECTION 27A.1.(b)** This section becomes effective for taxable years beginning
11 on or after January 1, 2009. Notwithstanding G.S. 105-163.15, no addition to tax may be made
12 under that statute for a taxable year beginning on or after January 1, 2009, and before January
13 1, 2010, with respect to an underpayment of individual income tax to the extent the
14 underpayment was created or increased by this section.
15

16 **PART XXVIIB. CORPORATE INCOME TAX CHANGES**

17
18 **SINGLE INCOME TAX RETURN FOR UNITARY BUSINESS**

19 **SECTION 27B.1.(a)** G.S. 105-130.2 reads as rewritten:

20 **'§ 105-130.2. Definitions.**

21 The following definitions apply in this Part:

22 (1) Code. – Defined in G.S. 105-228.90.

23 (1a) Common ownership. – The direct or indirect control or ownership of more
24 than fifty percent (50%) of the outstanding voting stock of the persons
25 carrying on a unitary business activity.

26 ~~(1a)~~(1b) Corporation. – A joint-stock company or association, an insurance
27 company, a domestic corporation, a foreign corporation, a unitary business
28 group, or a limited liability company.

29 ~~(1b)~~(1c) C Corporation. – A corporation that is not an S Corporation.

30 ~~(1e)~~(1d) Department. – The Department of Revenue.

31 (1e) Principal reporting member. – A member of the unitary business group
32 appointed by the group to act in its own name in all matters relating to the
33 tax liability for the unitary business group. The principal reporting member
34 continues to act for the group until a new principal reporting member is
35 appointed.

36 (2) Domestic corporation. – A corporation organized under the laws of this
37 State.

38 (3) Fiscal year. – An income year, ending on the last day of any month other
39 than December. A corporation that pursuant to the provisions of the Code
40 has elected to compute its federal income tax liability on the basis of an
41 annual period varying from 52 to 53 weeks shall compute its taxable income
42 under this Part on the basis of the same period used by the corporation in
43 computing its federal income tax liability for the income year.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 4 of 43

- 1 (4) Foreign corporation. – Any corporation other than a domestic corporation.
2 (4a) Gross income. – Defined in section 61 of the Code.
3 (4b) Income year. – The calendar year or the fiscal year upon the basis of which
4 the net income is computed under this Part. If no fiscal year has been
5 established, the income year is the calendar year. In the case of a return
6 made for a fractional part of a year under the provisions of this Part or under
7 rules adopted by the Secretary, the income year is the period for which the
8 return is made.
9 (5) Limited liability company. – Either a domestic limited liability company
10 organized under Chapter 57C of the General Statutes or a foreign limited
11 liability company authorized by that Chapter to transact business in this
12 State that is classified for federal income tax purposes as a corporation. As
13 applied to a limited liability company that is a corporation under this Part,
14 the term 'shareholder' means a member of the limited liability company and
15 the term 'corporate officer' means a member or manager of the limited
16 liability company.
17 (5a) Person. – Defined in G.S. 105-228.90.
18 ~~(5a)~~(5b) S Corporation. – Defined in G.S. 105-131(b).
19 ~~(5b)~~(5c) Secretary. – The Secretary of Revenue.
20 ~~(5e)~~(5d) State net income. – The taxpayer's federal taxable income as determined
21 under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a
22 ~~corporation taxpayer~~ that has income from business activity that is taxable
23 both within and without this State, allocated and apportioned to this State as
24 provided in G.S. 105-130.4.
25 ~~(5d)~~(5e) Taxable year. – Income year.
26 (6) Taxpayer. – A corporation subject to the tax imposed by this Part.
27 (7) Tax haven country. – A country identified in G.S. 143-59.1(c)(2), or a
28 country that has no or nominal effective tax on the relevant income and
29 meets at least one of the following conditions:
30 a. Has laws or practices that prevent effective exchange of information
31 for tax purposes with other governments on taxpayers benefiting
32 from the tax regime.
33 b. Has a tax regime which lacks transparency. A tax regime lacks
34 transparency if the details of legislative, legal, or administrative
35 provisions are not open and apparent or are not consistently applied
36 among similarly situated taxpayers, or if the information needed by
37 tax authorities to determine a taxpayer's correct tax liability, such as
38 accounting records and underlying documentation, is not adequately
39 available.
40 c. Facilitates the establishment of foreign-owned entities without the
41 need for a local substantive presence or prohibits these entities from
42 having any commercial impact on the local economy.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 5 of 43

- 1 d. Explicitly or implicitly excludes the jurisdiction's resident taxpayers
2 from taking advantage of the tax regime's benefits or prohibits
3 enterprises that benefit from the regime from operating in the
4 jurisdiction's domestic market.
- 5 e. Has a tax regime which is favorable for tax avoidance, based upon an
6 overall assessment of relevant factors, including whether the
7 jurisdiction has a significant untaxed offshore financial/other services
8 sector relative to its overall economy.
- 9 (8) Unitary business. – Business activities that meet one or more of the
10 following conditions:
- 11 a. Activities of the members are in the same general line of business.
12 b. Activities of the members are steps in a vertically structured
13 enterprise or process.
- 14 c. Activities of members that provide mutual benefit and produce a
15 significant sharing or exchange of value among them or a significant
16 flow of value between them.
- 17 d. Centralized management.
- 18 (9) Unitary business group. – One or more persons related through common
19 ownership who engage in a unitary business. The term does not include any
20 of the following persons:
- 21 a. A corporation exempt from taxation under Code section 501.
22 b. An S-Corporation.
23 c. A partnership.
24 d. An insurance company subject to tax under Article 8B of this
25 Chapter.
- 26 e. A corporation whose business activity outside the United States is
27 eighty percent (80%) or more of any such corporation's total business
28 activity is excluded from the unitary business group unless that
29 corporation is in a tax haven country. 'United States' means the 50
30 states of the United States, the District of Columbia, and the United
31 States' territories and possessions.'

32 **SECTION 27B.1.(b)** G.S. 105-130.3 reads as rewritten:

33 '**§ 105-130.3. Corporations.**

34 A tax is imposed on the State net income of every C Corporation or unitary business group
35 doing business in this State. An S Corporation is not subject to the tax levied in this section.
36 The tax rate is six and nine-tenths percent (6.9%) of the taxpayer's State net income, is a
37 percentage of the taxpayer's State net income computed as follows:

Income Years Beginning	Tax
38 In 1997	7.5%
39 In 1998	7.25%
40 In 1999	7%
41 After 1999	6.9%.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 6 of 43

1 **SECTION 27B.1.(c)** Part 1 of Article 4 of Chapter 105 of the General Statutes is
2 amended by adding a new section to read:

3 **'§ 105-130.3A. Taxation of unitary business group.**

4 (a) Return. – A unitary business group with business activity in this State must file an
5 income tax return that includes the State net income of the unitary business group. The unitary
6 business group's return must be filed by the principal reporting member as defined in
7 G.S.105-130.2. The accounting period of the unitary business group is the accounting period
8 used by members of the unitary business group for federal consolidated return purposes.

9 (b) Federal Taxable Income. – The federal taxable income of a unitary business group is
10 determined by adding together the federal taxable income of each member of the unitary
11 business group as if that member filed a separate federal income tax return and eliminating all
12 intercompany transactions. The federal taxable income of the unitary business group shall be
13 adjusted as required under G.S. 105-130.5 except that no adjustments shall be made with
14 respect to intercompany transactions that have been eliminated pursuant to this subsection. If a
15 unitary business group has income from business activity that is taxable both within and
16 without this State, the unitary business group's federal taxable income as adjusted pursuant to
17 G.S. 105-130.5 is allocated and apportioned to North Carolina pursuant to G.S. 105-130.4. The
18 property, payroll, and sales factors for the unitary business group are determined by adding
19 together the property, payroll, and sales of each member of the unitary business group after
20 eliminating intercompany transactions. The appropriate apportionment methodology as set out
21 in G.S. 105-130.4(m) through (s) to be used by the unitary business group is based on the
22 unitary business group, not the individual member.

23 (c) Tax Credits. – Tax credits earned by a member of the group, but not fully used by or
24 allowed to that member prior to becoming a member of the unitary business group, may be
25 used by the group, subject to the provisions of the specific credits. Tax credits brought into the
26 group or earned by the group remain with the group and may not be claimed by a member that
27 is no longer a member of the group.

28 (d) Net Economic Losses. – Net economic losses sustained by a member of the group,
29 but not fully used by that member prior to becoming a member of the unitary business group,
30 may be used by the group subject to the provisions of G.S. 105-130.8. Net economic losses
31 brought into the group or earned by the group remain with the group and may not be claimed
32 by a member that is no longer a member of the group.

33 (e) Liability. – Every member of the unitary business group is jointly and severally
34 liable for the unitary business group's tax liability under this Part, including any interest and
35 penalties.'

36 **SECTION 27B.1.(d)** G.S. 105-228.3 reads as rewritten:

37 **'§ 105-228.3. Definitions.**

38 The following definitions apply in this Article:

- 39 (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58
40 of the General Statutes, regulating hospital, medical, and dental service
41 corporations.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 7 of 43

- 1 (1a) Captive insurance company. – An insurer that receives more than fifty
2 percent (50%) of its gross premiums from affiliates as defined in
3 G.S. 105-130.6.
4 (2) ~~Insurer.~~ – An insurer as defined in ~~G.S. 58-1-5~~ G.S. 58-1-5, other than a
5 captive insurance company, or a group of employers who have pooled their
6 liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.
7 (3) ~~Self-insurer.~~ – An employer that carries its own risk pursuant to G.S. 97-93
8 of the Workers' Compensation Act.'

9 **SECTION 27B.1.(e)** G.S. 105-228.5 is amended by adding a new subsection to

10 read:

11 '(a1) A captive insurance company is not subject to the tax levied by this section if the
12 captive insurance company is part of a unitary business group with business activity in this
13 State.'

14 **SECTION 27B.1.(f)** G.S. 105-130.14 reads as rewritten:

15 **'§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.**

16 Any corporation electing or required to file a consolidated income tax return with the
17 Internal Revenue Service shall not file a consolidated return with the Secretary of Revenue,
18 unless specifically directed to do so in writing by the ~~Secretary~~ and ~~Secretary~~. If the
19 corporation is a member of a unitary business group, it, along with the other members of the
20 group, shall file an income tax return for the unitary business group. If the corporation is not a
21 member of a unitary business group, it shall determine its State net income as if a separate
22 return had been filed for federal purposes.'

23 **SECTION 27B.1.(g)** This section becomes effective for taxable years beginning on
24 or after January 1, 2010.

25
26 **EXPAND FRANCHISE TAX TO INCLUDE LIMITED LIABILITY BUSINESS**
27 **ENTITIES**

28 **SECTION 27B.2.(a)** G.S. 105-114 reads as rewritten:

29 **'§ 105-114. Nature of taxes; definitions.**

30 (a) ~~Nature of Taxes.~~ – ~~The taxes levied in this Article upon persons and partnerships are~~
31 ~~for the privilege of engaging in business or doing the act named. This Article imposes a tax on a~~
32 business entity for the privilege of doing business in this State in an ownership form that
33 confers limited liability on the owners of the entity.

34 (a1) ~~Scope.~~ – ~~The taxes levied in this Article upon corporations are privilege or excise~~
35 ~~taxes levied upon:~~

36 (1) ~~Corporations~~ – A corporation organized under the laws of this State for the
37 existence of the corporate rights and privileges granted by their charters, and
38 the enjoyment, under the protection of the laws of this State, of the powers,
39 rights, privileges and immunities derived from the State by the form of such
40 existence; and/or of another state.

41 (2) ~~Corporations not organized under the laws of this State for doing business in~~
42 ~~this State and for the benefit and protection which these corporations receive~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 8 of 43

1 ~~from the government and laws of this State in doing business in this State.~~A
2 limited liability company.

3 (3) A limited partnership.

4 (4) A limited liability partnership.

5 (5) A limited liability limited partnership.

6 (a2) ~~Condition for Doing Business. – If the corporation is organized under the laws of~~
7 ~~this State, the payment of the taxes levied by this Article is a condition precedent to the right to~~
8 ~~continue in the corporate form of organization. If the corporation is not organized under the~~
9 ~~laws of this State, payment of these taxes is a condition precedent to the right to continue to~~
10 ~~engage in doing business in this State.~~Payment of the taxes levied by this Article is a condition
11 precedent to the right to do business in this State.

12 (a3) ~~Tax Year. – The taxes levied in this Article are for the fiscal year of the State in~~
13 ~~which the taxes become due, except that the taxes levied in G.S. 105-122 are for the income~~
14 ~~year of the corporation~~business entity in which the taxes become due.

15 (a4) ~~No Double Taxation. – G.S. 105-122 does not apply to holding companies taxed~~
16 ~~under G.S. 105-120.2. G.S. 105-122 applies to a corporation~~business entity ~~taxed under~~
17 ~~another section of this Article only to the extent the taxes levied on the corporation~~business
18 entity ~~in G.S. 105-122 exceed the taxes levied in other sections of this Article on the~~
19 ~~corporation or on a limited liability company whose assets must be included in the corporation's~~
20 ~~tax base under G.S. 105-114.1.~~business entity.

21 (b) ~~Definitions. – The following definitions apply in this Article:~~

22 (1) Business entity. – A corporation, a limited liability company, a limited
23 partnership, a limited liability partnership, or a limited liability limited
24 partnership.

25 ~~(1)~~(1a) City. – Defined in G.S. 105-228.90.

26 ~~(1a)~~(1b) Code. – Defined in G.S. 105-228.90.

27 (2) ~~Corporation. – A domestic corporation, a foreign corporation, an electric~~
28 ~~membership corporation organized under Chapter 117 of the General~~
29 ~~Statutes or doing business in this State, or an association that is organized for~~
30 ~~pecuniary gain, has capital stock represented by shares, whether with or~~
31 ~~without par value, and has privileges not possessed by individuals or~~
32 ~~partnerships. The term includes a mutual or capital stock savings and loan~~
33 ~~association or building and loan association chartered under the laws of any~~
34 ~~state or of the United States. The term includes a limited liability company~~
35 ~~that elects to be taxed as a corporation under the Code, but does not~~
36 ~~otherwise include a limited liability company.~~

37 (3) ~~Doing business. – Each and every act, power, or privilege exercised or~~
38 ~~enjoyed in this State, as an incident to, or by virtue of the powers and~~
39 ~~privileges granted by the laws of this State.~~

40 (4) ~~Income year. – Defined in G.S. 105-130.2(4b).~~

41 (5) Limited liability company. – An entity formed under Chapter 57C of the
42 General Statutes.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 9 of 43

1 (6) Limited liability limited partnership. – A limited partnership registered under
2 G.S. 59-210.

3 (7) Limited liability partnership. – An entity registered under Article 3B of
4 Chapter 59 of the General Statutes.

5 (8) Limited partnership. – A partnership formed with one or more general
6 partners and one or more limited partners.

7 (c) Recodified as G.S. 105-114.1 by Session Laws 2002-126, s. 30G.2.(b), effective
8 January 1, 2003.'

9 **SECTION 27B.2.(b)** G.S. 105-114.1 is repealed.

10 **SECTION 27B.2.(c)** G.S. 105-120.2 reads as rewritten:

11 '**§ 105-120.2. Franchise or privilege tax on holding companies.**

12 (a) ~~Requirement. – Every corporation, domestic and foreign, incorporated or, by an act,~~
13 ~~domesticated under the laws of this State or doing business in this State~~ A business entity
14 ~~which, at the close of its taxable year is a holding company as defined in subsection (c) of this~~
15 ~~section, shall, pursuant to the provisions of G.S. 105-122;G.S. 105-122, do all of the following:~~

16 (1) ~~Make a report and statement, and statement.~~

17 (2) ~~Determine the total amount of its issued and outstanding capital stock,~~
18 ~~surplus and undivided profits, and capital base.~~

19 (3) ~~Apportion such outstanding capital stock, surplus and undivided profits its~~
20 ~~capital base to this State.~~

21 (b) Tax. – A business entity taxed under this section must pay the tax due under this
22 ~~subsection at the time a report is due under G.S. 105-122.~~

23 (1) ~~Every corporation taxed under this section shall annually pay to the~~
24 ~~Secretary of Revenue, at the time the report and statement are due, a~~
25 ~~franchise or privilege tax, which is hereby levied, at the rate of~~ The tax rate
26 ~~is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the~~
27 ~~amount determined under subsection (a) of this section, but in no case shall~~
28 ~~the tax be more than seventy-five thousand dollars (\$75,000) nor less than~~
29 ~~thirty-five dollars (\$35.00).~~

30 (2) ~~Notwithstanding the provisions of subdivision (1) of this subsection, if~~ If the
31 ~~tax produced pursuant to application of under this paragraph (2) subdivision~~
32 ~~exceeds the tax produced pursuant to application of subdivision (1), under~~
33 ~~subdivision (1) of this subsection, then the tax shall be is levied at the rate of~~
34 ~~one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) on the~~
35 ~~greater of the amounts of following two amounts:~~

36 a. Fifty-five percent (55%) of the appraised value as determined for ad
37 valorem taxation of all the real and tangible personal property in this
38 State of each such corporation plus the total appraised value of
39 intangible property returned for taxation of intangible personal
40 property as computed under ~~G.S. 105-122(d); or~~ G.S. 105-122(d).

41 b. The total actual investment in tangible property in this State of such
42 corporation as computed under G.S. 105-122(d).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 10 of 43

1 (c) Definition. – The following definitions apply in this section:~~For purposes of this~~
2 ~~section, a~~

3 (1) Capital interest. – The right of a business entity that is not a corporation to
4 receive a percentage of the business entity's assets upon dissolution after
5 payments to creditors.

6 (2) ~~'holding company'~~ is a Holding company. – A ~~corporation~~ business entity
7 that receives during its taxable year more than eighty percent (80%) of its
8 gross income from corporations ~~a business entity~~ in which it owns directly or
9 indirectly more than fifty percent (50%) of the outstanding voting stock or
10 voting capital interests.

11 (d) Repealed by Session Laws 1985, c. 656, s. 39.

12 (e) Prohibition on Local Tax. – Counties, cities and towns shall not levy a franchise tax
13 ~~on corporations~~ a business entity taxed under this section. The tax imposed under the
14 provisions of G.S. 105-122 shall not apply to businesses taxed under the provisions of this
15 section.

16 (f) Credit. – In determining the total tax payable by any holding company under this
17 section, there shall be allowed as a credit on such tax the amount of the credit authorized under
18 Part 5 of Article 4 of this Chapter.'

19 **SECTION 27B.2.(d)** G.S. 105-122 reads as rewritten:

20 '**§ 105-122. Franchise or privilege tax on domestic and foreign corporations.** a business
21 entity.

22 (a) Tax Imposed. – An annual franchise or ~~privilege~~ tax is imposed on a ~~corporation~~
23 business entity doing business in this State. The tax is determined on the basis of the books and
24 records of the ~~corporation~~ business entity as of the close of its income year. A ~~corporation~~
25 subject to the tax must file a return under affirmation with the Secretary at the place and in the
26 manner prescribed by the Secretary. The return must be signed by the president, vice president,
27 treasurer, or chief financial officer of the corporation. The tax rate is one dollar and fifty cents
28 (\$1.50) per one thousand dollars (\$1,000) of the capital base of the business entity and may not
29 be less than thirty-five dollars (\$35.00). The return is due on or before the fifteenth day of the
30 fourth month following the end of the corporation's business entity's income year.

31 (b) ~~Determination of Capital Base.~~ Base of Corporation. – A corporation taxed under
32 this section shall determine the total amount of its issued and outstanding capital stock, surplus,
33 and undivided profits. Every corporation doing business in this State which is a parent,
34 subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and
35 undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a
36 part of its capital used in its business and as a part of the base for franchise tax under this
37 section. If any part of the capital of the creditor corporation is capital borrowed from a source
38 other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this
39 subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary,
40 or affiliate of the creditor corporation, may deduct from the debt included a proportionate part
41 determined on the basis of the ratio of the borrowed capital of the creditor corporation to the
42 total assets of the creditor corporation. If the creditor corporation is also taxable under the
43 provisions of this section, the creditor corporation is allowed to deduct from the total of its

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 11 of 43

1 capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary,
2 or affiliated corporation to the extent that the debt has been included in the tax base of the
3 parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of
4 this section. No

5 No reservation or allocation from surplus or undivided profits is allowed except as provided
6 below:

- 7 (1) Definite and accrued legal liabilities.
8 (2) Taxes accrued, dividends declared, and reserves for depreciation of tangible
9 assets as permitted for income tax purposes.
10 (3) When including deferred tax liabilities, a corporation may reduce the amount
11 included in its base by netting against that amount deferred tax assets. The
12 reduction may not decrease deferred tax liabilities below zero (0).
13 (4) Reserves for the cost of any air-cleaning device or sewage or waste
14 treatment plant, including waste lagoons, and pollution abatement equipment
15 purchased or constructed and installed which reduces the amount of air or
16 water pollution resulting from the emission of air contaminants or the
17 discharge of sewage and industrial wastes or other polluting materials or
18 substances into the outdoor atmosphere or streams, lakes, or rivers, upon
19 condition that the corporation claiming such deductible liability shall furnish
20 to the Secretary a certificate from the Department of Environment and
21 Natural Resources or from a local air pollution control program for
22 air-cleaning devices located in an area where the Environmental
23 Management Commission has certified a local air pollution control program
24 pursuant to G.S. 143-215.112 certifying that the Environmental Management
25 Commission or local air pollution control program has found as a fact that
26 the air-cleaning device, waste treatment plant or pollution abatement
27 equipment purchased or constructed and installed as above described has
28 actually been constructed and installed and that such plant or equipment
29 complies with the requirements of the Environmental Management
30 Commission or local air pollution control program with respect to such
31 devices, plants or equipment, that such device, plant or equipment is being
32 effectively operated in accordance with the terms and conditions set forth in
33 the permit, certificate of approval, or other document of approval issued by
34 the Environmental Management Commission or local air pollution control
35 program and that the primary purpose thereof is to reduce air or water
36 pollution resulting from the emission of air contaminants or the discharge of
37 sewage and waste and not merely incidental to other purposes and functions.
38 (5) Reserves for the cost of purchasing and installing equipment or constructing
39 facilities for the purpose of recycling or resource recovering of or from solid
40 waste or for the purpose of reducing the volume of hazardous waste
41 generated shall be treated as deductible for the purposes of this section upon
42 condition that the corporation claiming such deductible liability shall furnish
43 to the Secretary a certificate from the Department of Environment and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 12 of 43

1 Natural Resources certifying that the Department of Environment and
2 Natural Resources has found as a fact that the equipment or facility has
3 actually been purchased, installed or constructed, that it is in conformance
4 with all rules and regulations of the Department of Environment and Natural
5 Resources, and the recycling or resource recovering is the primary purpose
6 of the facility or equipment.

7 (6) Reserves for the cost of constructing facilities of any private or public utility
8 built for the purpose of providing sewer service to residential and outlying
9 areas shall be treated as deductible for the purposes of this section; the
10 deductible liability allowed by this section shall apply only with respect to
11 such pollution abatement plants or equipment constructed or installed on or
12 after January 1, 1955.

13 (7) The cost of treasury stock.

14 (8) In the case of an international banking facility, the capital base shall be
15 reduced by the excess of the amount as of the end of the taxable year of all
16 assets of an international banking facility which are employed outside the
17 United States over liabilities of the international banking facility owed to
18 foreign persons. For purposes of such reduction, foreign persons shall have
19 the same meaning as defined in G.S. 105-130.5(b)(13)d.

20 ~~Every corporation doing business in this State which is a parent, subsidiary, or affiliate of~~
21 ~~another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness~~
22 ~~owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business~~
23 ~~and as a part of the base for franchise tax under this section. If any part of the capital of the~~
24 ~~creditor corporation is capital borrowed from a source other than a parent, subsidiary, or~~
25 ~~affiliate, the debtor corporation, which is required under this subsection to include in its tax~~
26 ~~base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor~~
27 ~~corporation, may deduct from the debt included a proportionate part determined on the basis of~~
28 ~~the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor~~
29 ~~corporation. If the creditor corporation is also taxable under the provisions of this section, the~~
30 ~~creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided~~
31 ~~profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the~~
32 ~~extent that the debt has been included in the tax base of the parent, subsidiary, or affiliated~~
33 ~~debtor corporation reporting for taxation under the provisions of this section.~~

34 (b1) The following definitions apply in this subsection: subsection (b) of this section:

35 (1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

36 (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
37 whatsoever nature furnished by a parent, subsidiary, or affiliated
38 corporation, other than indebtedness endorsed, guaranteed, or otherwise
39 supported by one of these corporations.

40 (3) Parent. – The same meaning as specified in G.S. 105-130.6.

41 (4) Subsidiary. – The same meaning as specified in G.S. 105-130.6.

42 (b2) Capital Base for Noncorporate Business Entity. – A business entity that is not a
43 corporation must determine its net worth. Its net worth is equal to its members' and partners'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 13 of 43

1 capital accounts, computed in accordance with generally accepted accounting principles. If the
2 business entity does not maintain its book and records in accordance with generally accepted
3 accounting principles, its net worth is computed in accordance with the accounting method
4 used by the entity for federal tax purposes, so long as the method fairly reflects the taxpayer's
5 net worth for purposes of the tax levied by this section. A business entity must add to its net
6 worth all indebtedness owed to it by a related person, as defined in G.S. 105-163.010.

7 (c) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

8 (c1) Apportionment. – A business entity that is doing business in this State and in one or
9 more other states must apportion its tax base to this State. A corporation that is subject to
10 income tax under Article 4 of this Chapter must use the fraction it applies in apportioning its
11 income under that Article. A business entity that is not subject to income tax under Article 4 of
12 this Chapter must apportion its net worth by using the fraction it would be required to apply in
13 apportioning its income if it were subject to that Article. A business entity that believes this
14 apportionment method subjects a greater portion of its net worth to tax under this section than
15 is attributable to its business in this State may make a written request to the Secretary for
16 permission to use an alternative method of apportionment, in the same manner as provided in
17 G.S. 105-130.4(t1). A corporation that is doing business in this State and in one or more other
18 states must apportion its capital stock, surplus, and undivided profits to this State. A
19 corporation must use the apportionment method set out in subdivision (1) of this subsection
20 unless the Department has authorized it to use a different method under subdivision (2) of this
21 subsection. The portion of a corporation's capital stock, surplus, and undivided profits
22 determined by applying the appropriate apportionment method is considered the amount of
23 capital stock, surplus, and undivided profits the corporation uses in its business in this State.

24 (1) Statutory. — ~~A corporation that is subject to income tax under Article 4 of~~
25 ~~this Chapter must apportion its capital stock, surplus, and undivided profits~~
26 ~~by using the fraction it applies in apportioning its income under that Article.~~
27 ~~A corporation that is not subject to income tax under Article 4 of this~~
28 ~~Chapter must apportion its capital stock, surplus, and undivided profits by~~
29 ~~using the fraction it would be required to apply in apportioning its income if~~
30 ~~it were subject to that Article. The apportionment method set out in this~~
31 ~~subdivision is considered the statutory method of apportionment and is~~
32 ~~presumed to be the best method of determining the amount of a corporation's~~
33 ~~capital stock, surplus, and undivided profits attributable to the corporation's~~
34 ~~business in this State.~~

35 (2) Alternative. — ~~A corporation that believes the statutory apportionment~~
36 ~~method set out in subdivision (1) of this subsection subjects a greater portion~~
37 ~~of its capital stock, surplus, and undivided profits to tax under this section~~
38 ~~than is attributable to its business in this State may make a written request to~~
39 ~~the Secretary for permission to use an alternative method. The request must~~
40 ~~set out the reasons for the corporation's belief and propose an alternative~~
41 ~~method. The corporation has the burden of establishing by clear, cogent, and~~
42 ~~convincing proof that the statutory apportionment method subjects a greater~~
43 ~~portion of the corporation's capital stock, surplus, and undivided profits to~~

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 202

AMENDMENT NO. 3

(to be filled in by

Principal Clerk)

S202-ASVxf-21 [v.6]

Page 14 of 43

1 ~~tax under this section than is attributable to its business in this State and that~~
2 ~~the proposed alternative method is a better method of determining the~~
3 ~~amount of the corporation's capital stock, surplus, and undivided profits~~
4 ~~attributable to the corporation's business in this State.~~

5 The Secretary must issue a written decision on a corporation's request for
6 an alternative apportionment method. If the decision grants the request, it
7 must describe the alternative method the corporation is authorized to use and
8 state the tax years to which the alternative method applies. A decision may
9 apply to no more than three tax years. A corporation may renew a request to
10 use an alternative apportionment method by following the procedure in this
11 subdivision. A decision of the Secretary on a request for an alternative
12 apportionment method is final and is not subject to administrative or judicial
13 review. A corporation authorized to use an alternative method may apportion
14 its capital stock, surplus, and undivided profits in accordance with the
15 alternative method or the statutory method.

16 (d) Alternative Tax Base. – After determining the proportion of its total capital stock,
17 surplus and undivided profits as set out in subsection (c) of this section, which amount The tax
18 imposed by this section shall not be less than fifty-five percent (55%) of the appraised value as
19 determined for ad valorem taxation of all the real and tangible personal property in this State of
20 each corporation-business entity nor less than its total actual investment in tangible property in
21 this State, ~~every corporation taxed under this section shall annually pay to the Secretary of~~
22 ~~Revenue, at the time the report and statement are due, a franchise or privilege tax at the rate of~~
23 ~~one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of~~
24 ~~capital stock, surplus and undivided profits as provided in this section. The tax imposed in this~~
25 ~~section shall not be less than thirty five dollars (\$35.00) and shall be for the privilege of~~
26 ~~carrying on, doing business, and/or the continuance of articles of incorporation or~~
27 ~~domestication of each corporation in this State. Appraised value of tangible property including~~
28 ~~real estate is the ad valorem valuation for the calendar year next preceding the due date of the~~
29 ~~franchise tax return. The term 'total actual investment in tangible property' as used in this~~
30 ~~section means the total original purchase price or consideration to the reporting taxpayer of its~~
31 ~~tangible properties, including real estate, in this State plus additions and improvements thereto~~
32 ~~less reserve for depreciation as permitted for income tax purposes, and also less any~~
33 ~~indebtedness incurred and existing by virtue of the purchase of any real estate and any~~
34 ~~permanent improvements made thereon. In computing 'total actual investment in tangible~~
35 ~~personal property' there shall also be deducted reserves for the entire cost of any air-cleaning~~
36 ~~device or sewage or waste treatment plant, including waste lagoons, and pollution abatement~~
37 ~~equipment purchased or constructed and installed which reduces the amount of air or water~~
38 ~~pollution resulting from the emission of air contaminants or the discharge of sewage and~~
39 ~~industrial wastes or other polluting materials or substances into the outdoor atmosphere or into~~
40 ~~streams, lakes, or rivers, upon condition that the corporation claiming this deduction shall~~
41 ~~furnish to the Secretary a certificate from the Department of Environment and Natural~~
42 ~~Resources or from a local air pollution control program for air-cleaning devices located in an~~
43 ~~area where the Environmental Management Commission has certified a local air pollution~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 15 of 43

1 control program pursuant to G.S. 143-215.112 certifying that said Department or local air
2 pollution control program has found as a fact that the air-cleaning device, waste treatment plant
3 or pollution abatement equipment purchased or constructed and installed as above described
4 has actually been constructed and installed and that the device, plant or equipment complies
5 with the requirements of the Environmental Management Commission or local air pollution
6 control program with respect to the devices, plants or equipment, that the device, plant or
7 equipment is being effectively operated in accordance with the terms and conditions set forth in
8 the permit, certificate of approval, or other document of approval issued by the Environmental
9 Management Commission or local air pollution control program and that the primary purpose is
10 to reduce air or water pollution resulting from the emission of air contaminants or the discharge
11 of sewage and waste and not merely incidental to other purposes and functions. The cost of
12 constructing facilities of any private or public utility built for the purpose of providing sewer
13 service to residential and outlying areas is treated as deductible for the purposes of this section;
14 the deductible liability allowed by this section shall apply only with respect to pollution
15 abatement plants or equipment constructed or installed on or after January 1, 1955.

16 (d1) Credits. – A corporation is allowed a credit against the tax imposed by this section
17 for a taxable year equal to one-half of the amount of tax payable during the taxable year under
18 Article 5E of this Chapter. The credit allowed by this subsection may not exceed the amount of
19 tax imposed by this section for the taxable year, reduced by the sum of all other credits allowed
20 against that tax, except tax payments made by or on behalf of the taxpayer.

21 (e) Change in Income Year. – ~~Any corporation~~ A business entity which changes its
22 income year, and files a 'short period' income tax return pursuant to G.S. 105-130.15 shall file a
23 franchise tax return in accordance with the provisions of this section in the manner and as of
24 the date specified in subsection (a) of this section. ~~Such corporation shall be~~ The business entity
25 is entitled to deduct from the total franchise tax computed (on an annual basis) on such return
26 the amount of franchise tax previously paid which is applicable to the period subsequent to the
27 beginning of the new income year.

28 (f) ~~The report, statement and tax required by this section shall be in addition to all other~~
29 ~~reports required or taxes levied and assessed in this State.~~

30 (g) Prohibition on Local Tax. – Counties, cities and towns shall not levy a franchise tax
31 on ~~corporations~~ a business entity taxed under this section.

32 (h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5.'

33 **SECTION 27B.2.(e)** G.S. 105-125(b) reads as rewritten:

34 '(b) Certain Investment Companies. – A ~~corporation~~ business entity doing business in
35 North Carolina that meets one or more of the following conditions may, in determining its basis
36 for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds,
37 debentures, or other securities or evidences of debt of other corporations, partnerships,
38 individuals, municipalities, governmental agencies, or governments:

39 (1) A regulated investment company. – A regulated investment company is an
40 entity that qualifies as a regulated investment company under section 851 of
41 the Code.

42 (2) A REIT, unless the REIT is a captive REIT. – The terms 'REIT' and 'captive
43 REIT' have the same meanings as defined in G.S. 105-130.12.'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 16 of 43

1 **SECTION 27B.2.(f)** G.S. 105-127 reads as rewritten:

2 '**§ 105-127. When franchise or privilege taxes payable.**

3 (a) Tax Due. – The taxes imposed under this Article are due when a return is due. A
4 taxpayer may ask the Secretary for an extension of time to file a return under
5 G.S. 105-263. ~~Every corporation, domestic or foreign, from which a report is required by law to~~
6 ~~be made to the Secretary of Revenue, shall, unless otherwise provided, pay to said Secretary~~
7 ~~annually the franchise tax as required by G.S. 105-122.~~

8 (b) Repealed by Session Laws 1998-98, s. 78, effective August 14, 1998.

9 (c) ~~It shall be the duty of the treasurer or other officer having charge of any such~~
10 ~~corporation, domestic or foreign, upon which a tax is herein imposed, to transmit the amount of~~
11 ~~the tax due to the Secretary of Revenue within the time provided by law for payment of same.~~

12 (d), (e) Repealed by Session Laws 2002-72, s. 11, effective August 12, 2002.

13 (f) Dissolution. – After the end of the income year in which a domestic corporation is
14 dissolved pursuant to Article 14 of Chapter 55 of the General Statutes, the corporation is no
15 longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the
16 corporation has engaged in business activities in this State not appropriate to winding up and
17 liquidating its business and affairs.'

18 **SECTION 27B.2.(g)** G.S. 105-128 and G.S. 105-129 are repealed.

19 **SECTION 27B.2.(h)** This section is effective for taxable years beginning on or
20 after January 1, 2010.

21
22 **THROWBACK RULE**

23 **SECTION 27B.3.(a)** G.S. 105-130.4(1)(2) reads as rewritten:

24 (2) Sales of tangible personal property are in this State if (i) the property is
25 received in this State by ~~the purchaser.~~ a purchaser other than the United
26 States government or (ii) the property is shipped from a place in this State
27 and the purchaser is the United States government or the taxpayer is not
28 taxable in the state of the purchaser. In the case of delivery of goods by
29 common carrier or by other means of transportation, including transportation
30 by the purchaser, the place at which the goods are ultimately received after
31 all transportation has been completed shall be considered as the place at
32 which the goods are received by the purchaser. Direct delivery into this State
33 by the taxpayer to a person or firm designated by a purchaser from within or
34 without the State shall constitute delivery to the purchaser in this State.'

35 **SECTION 27B.3.(b)** This section is effective for taxable years beginning on or
36 after January 1, 2010.

37
38 **CONFORM BANK EXPENSE DEDUCTION**

39 **SECTION 27B.4.(a)** G.S. 105-130.5(a) is amended by adding a new subdivision to
40 read:

41 (a) The following additions to federal taxable income shall be made in determining
42 State net income:

43 ...

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 17 of 43

1 (2a) That portion of a financial institution's interest expense that is allocable to
2 interest income exempt from taxation under this Part. The allocable portion
3 of the interest expense is the portion for which deduction would be
4 disallowed pursuant to section 265(b) of the Code if the interest were earned
5 on a tax-exempt obligation as defined in section 265(b) of the Code.

6 '

7 **SECTION 27B.4.(b)** This section is effective for taxable years beginning on or
8 after January 1, 2010.

9
10 **PART XXVIIC. SALES TAX CHANGES**

11
12 **INCREASE STATE SALES TAX BY ONE-QUARTER CENT**

13 **SECTION 27C.1.(a)** The introductory language of G.S. 105-164.4(a) reads as
14 rewritten:

15 '(a) A privilege tax is imposed on a retailer at the following percentage rates of the
16 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and
17 ~~one-half percent (4.5%)~~ three-quarters percent (4.75%).'

18 **SECTION 27C.1.(b)** Subsection (a) of this section increasing the general rate of
19 State sales tax does not apply to construction materials purchased to fulfill a lump-sum or
20 unit-price contract entered into or awarded before the effective date of the increase or entered
21 into or awarded pursuant to a bid made before the effective date of the increase when the
22 construction materials would otherwise be subject to the increased rate of tax provided under
23 that subsection.

24 **SECTION 27C.1.(c)** The introductory language of G.S. 105-164.4(a) reads as
25 rewritten:

26 '(a) A privilege tax is imposed on a retailer at the following percentage rates of the
27 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is ~~four and~~
28 ~~three-quarters percent (4.75%)~~ five percent (5%).'

29 **SECTION 27C.1.(d)** Subsections (a) and (b) of this section become effective
30 August 1, 2009, and apply to sales made on or after that date. Subsection (a) of this section is
31 repealed October 1, 2009. Subsection (c) of this section is effective October 1, 2009, and
32 applies to sales made on or after that date. The remainder of this section is effective when it
33 becomes law. This section does not affect the rights or liabilities of the State, a taxpayer, or
34 another person arising under a statute amended or repealed by this section before the effective
35 date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that
36 accrued under the amended or repealed statute before the effective date of its amendment or
37 repeal.

38 **NEXUS CLARIFICATION AND CLICK-THROUGHS**

39 **SECTION 27C.2.(a)** G.S. 105-164.3(18) is recodified as G.S. 105-164.3(33g) and
40 reads as rewritten:

41 **'§ 105-164.3. Definitions.**

42 The following definitions apply in this Article:

43 ...

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 18 of 43

1 (33g) ~~Mail-order Remote~~ sale. – A sale of tangible personal property, ordered by
2 mail, by telephone, computer link, via the Internet, or other by another
3 similar method, to a purchaser who is in this State at the time the order is
4 remitted, from a retailer who receives the order in another state and
5 transports the property or causes it to be transported to a person in this State.
6 It is presumed that a resident of this State who remits an order was in this
7 State at the time the order was remitted.

8 '
9 **SECTION 27C.2.(b)** The catch line of G.S. 105-164.8 reads as rewritten:

10 '**§ 105-164.8. Retailer's obligation to collect tax; mail-order-remote sales subject to tax.**'

11 **SECTION 27C.2.(c)** G.S. 105-164.8(b) reads as rewritten:

12 '(b) ~~Mail-Order-Remote~~ Sales. – A retailer who makes a ~~mail-order-remote~~ sale is
13 engaged in business in this State and is subject to the tax levied under this Article if at least one
14 of the following conditions is met:

15 (1) The retailer is a corporation engaged in business under the laws of this State
16 or a person domiciled in, a resident of, or a citizen of, this State.

17 (2) The retailer maintains retail establishments or offices in this State, whether
18 the ~~mail-order-remote~~ sales thus subject to taxation by this State result from
19 or are related in any other way to the activities of ~~such the~~ establishments or
20 offices.

21 (3) ~~The retailer has representatives in this State who solicit business or transact~~
22 ~~business on behalf of the retailer, solicits or transacts business in this State~~
23 by employees, independent contractors, agents, or other representatives
24 whether the ~~mail-order-remote~~ sales thus subject to taxation by this State
25 result from or are related in any other way to ~~such the~~ solicitation or
26 transaction of business. A retailer is presumed to be soliciting or transacting
27 business by an independent contractor, agent, or other representative if the
28 retailer enters into an agreement with a resident of this State under which the
29 resident, for a commission or other consideration, directly or indirectly refers
30 potential customers, whether by a link on an Internet Web site or otherwise,
31 to the retailer, if the cumulative gross receipts from sales by the retailer to
32 purchasers in this State who are referred to the retailer by all residents with
33 this type of agreement with the retailer is in excess of ten thousand dollars
34 (\$10,000) during the preceding four quarterly periods. This presumption
35 may be rebutted by proof that the resident with whom the retailer has an
36 agreement did not engage in any solicitation in the State on behalf of the
37 seller that would satisfy the nexus requirement of the United States
38 Constitution during the four quarterly periods in question.

39 (4) Repealed by Session Laws 1991, c. 45, s. 16.

40 (5) The retailer, by purposefully or systematically exploiting the market
41 provided by this State by any media-assisted, media-facilitated, or
42 media-solicited means, including direct mail advertising, distribution of
43 catalogs, computer-assisted shopping, television, radio or other electronic

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 19 of 43

1 media, telephone solicitation, magazine or newspaper advertisements, or
2 other media, creates nexus with this State.

3 (6) Through compact or reciprocity with another jurisdiction of the United
4 States, that jurisdiction uses its taxing power and its jurisdiction over the
5 retailer in support of this State's taxing power.

6 (7) The retailer consents, expressly or by implication, to the imposition of the
7 tax imposed by this Article. For purposes of this subdivision, evidence that a
8 retailer engaged in the activity described in subdivision (5) ~~shall be~~ is prima
9 facie evidence that the retailer consents to the imposition of the tax imposed
10 by this Article.

11 (8) The retailer is a holder of a wine shipper permit issued by the ABC
12 Commission pursuant to G.S. 18B-1001.1.'

13 **SECTION 27C.2.(d)** This section is effective when it becomes law.

14 **SALES TAX BASE EXPANSION**

15 **SECTION 27C.3.(a)** G.S. 105-37.1, 105-38.1, and 105-40 are repealed.

16 **SECTION 27C.3.(b)** G.S. 105-164.3 reads as rewritten:

17 **'§ 105-164.3. Definitions.**

18 The following definitions apply in this Article:

19 ...

20 (1b) Audio work. – A series of musical, spoken, or other sounds, including a
21 ringtone.

22 (1c) Audiovisual. – A series of related images and any sounds accompanying the
23 images that impart an impression of motion when shown in succession.

24 (1b)(1d) Bundled transaction. – A retail sale of two or more distinct and identifiable
25 products, at least one of which is taxable and one of which is exempt, for
26 one nonitemized price. Products are not sold for one nonitemized price if an
27 invoice or another sales document made available to the purchaser separately
28 identifies the price of each product. A bundled transaction does not include
29 the retail sale of any of the following:

30 a. A product and any packaging item that accompanies the product and
31 is exempt under G.S. 105-164.13(23).

32 b. A sale of two or more products whose combined price varies, or is
33 negotiable, depending on the products the purchaser selects.

34 c. A sale of a product accompanied by a transfer of another product
35 with no additional consideration.

36 d. A product and the delivery or installation of the product.

37 e. A product and any service necessary to complete the sale.

38 (1d)(1e) Business. – Includes any activity engaged in by any person or caused to be
39 engaged in by him with the object of gain, profit, benefit or advantage, either
40 direct or indirect. The term 'business' shall not be construed in this Article to
41 include occasional and isolated sales or transactions by a person who does
42 not hold himself out as engaged in business.

43 ...

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 202

AMENDMENT NO. 3

(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 20 of 43

- 1 (7a) Digital code. – A code that gives a purchaser of the code a right to receive an
2 item by electronic delivery or electronic access. A digital code may be
3 obtained by an electronic means or by a tangible means. A digital code does
4 not include a gift certificate or a gift card.
- 5 (7a)(7h) Direct mail. – Printed material delivered or distributed by the United States
6 Postal Service or other delivery service to a mass audience or to addresses
7 on a mailing list provided by the purchaser or at the direction of the
8 purchaser when the cost of the items is not billed directly to the recipients.
9 The term includes tangible personal property supplied directly or indirectly
10 by the purchaser to the direct mail seller for inclusion in the package
11 containing the printed material. The term does not include multiple items of
12 printed material delivered to a single address.
- 13 ...
- 14 (33e) Repair, maintenance, and installation services. – The term includes the
15 activities listed in this subdivision:
16 a. Repairing tangible personal property to restore it to proper working
17 order.
18 b. Maintaining tangible personal property to keep the property in
19 working order, to avoid breakdown, or to prevent unnecessary
20 repairs.
21 c. Installing tangible personal property or a fixture that becomes part of
22 real property.
- 23 ...
- 24 (35f) Ringtone. – A digitized sound file that is downloaded onto a device and that
25 may be used to alert the user of the device with respect to a communication.
- 26 (36) Sale or selling. – The transfer of title or possession of tangible personal
27 property, an item, conditional or otherwise, in any manner or by any means
28 whatsoever, for a consideration paid or to be paid. The
29 term includes the fabrication following:
30 a. Fabrication of tangible personal property for consumers by persons
31 engaged in business who furnish either directly or indirectly the
32 materials used in the fabrication work. The term also includes the
33 furnishing
34 b. Furnishing or preparing for a consideration of any tangible personal
35 property consumed on the premises of the person furnishing or
36 preparing the property or consumed at the place at which the
37 property is furnished or prepared. The term also includes a
38 c. A transaction in which the possession of the property an item is
39 transferred but the seller retains title or security for the payment of
40 the consideration.
41 d. Transfer of a digital code.
42 If a retailer engaged in the business of selling prepared food and drink
43 for immediate or on-premises consumption also gives prepared food or drink

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 21 of 43

1 to its patrons or employees free of charge, for the purposes of this Article the
2 property given away is considered sold along with the property sold. If a
3 retailer gives an item of inventory to a customer free of charge on the
4 condition that the customer purchase similar or related property, the item
5 given away is considered sold along with the item sold. In all other cases,
6 property given away or used by any retailer or wholesale merchant is not
7 considered sold, whether or not the retailer or wholesale merchant recovers
8 its cost of the property from sales of other property.

9 ...
10 (38b) Service contract. – A warranty agreement, a maintenance agreement, a repair
11 contract, or a similar agreement or contract by which the seller agrees to
12 maintain or repair tangible personal property.

13
14 SECTION 27C.3.(c) G.S. 105-164.4(a), as amended by Section 3.1 of this act,

15 reads as rewritten:

16 (a) A privilege tax is imposed on a retailer at the following percentage rates of the
17 retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is five
18 percent (5%).

19 ...
20 (6b) The general rate applies to the sales price of an item that is listed in this
21 subdivision, is delivered or accessed electronically, and would be taxable
22 under this Article if sold in a tangible medium. The tax applies regardless of
23 whether the purchaser of the item has a right to use it permanently or to use
24 it without making continued payments. The tax does not apply to
25 telecommunications service, video programming service, satellite digital
26 audio radio service, or any other service that is taxed under another
27 subdivision of this subsection. A person who sells an item that is taxable
28 under this subdivision is considered a retailer under this Article. The
29 following items are subject to tax under this subdivision:

- 30 a. An audio work.
31 b. An audiovisual work.
32 c. A book.

33 ...
34 (9) The general rate of tax applies to the gross receipts derived from a service
35 contract and from repair, maintenance, and installation services.

36 (10) The general rate of tax applies to the gross receipts from charges for any of
37 the activities listed in this subdivision. Gross receipts may take the form of a
38 single or multioccasion ticket, a seasonal pass, a permanent seat license, a
39 charge for a luxury suite, a cover charge, a membership fee, periodic dues,
40 or any other form of payment. A person engaged in the business of providing
41 any of these activities is considered a retailer under this Article:

- 42 a. Admission to a live performance or other live event of any kind.
43 b. Admission to a movie or other audiovisual work.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 22 of 43

1 (11) The general rate of tax applies to the gross receipts derived from providing
2 air, surface, or combined courier delivery services of parcels.'

3 **SECTION 27C.3.(d)** Part 2 of Article 5 of Chapter 105 of the General Statutes is
4 amended by adding a new section to read:

5 **'§ 105-164.4E. When an item given away is considered sold.**

6 An item that is given away or used by a retailer or a wholesale merchant is not considered
7 sold, whether or not the retailer or wholesale merchant receives its cost of the item from sales
8 of other items, except as follows:

9 (1) If a retailer engaged in the business of selling prepared food and drink for
10 immediate or on-premises consumption also gives prepared food or drink to
11 its patrons or employees free of charge, for the purposes of this Article the
12 property given away is considered sold along with the property sold.

13 (2) If a retailer gives an item of inventory to a customer free of charge on the
14 condition that the customer purchase similar or related property, the item
15 given away is considered sold along with the item sold.'

16 **SECTION 27C.3.(e)** G.S. 105-164.7 reads as rewritten:

17 **'§ 105-164.7. ~~Sales tax part of purchase price.~~Retailer to collect sales tax from purchaser**
18 **as trustee for State.**

19 ~~Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or~~
20 ~~delivering or taking an order for the sale or delivery of taxable tangible personal property or a~~
21 ~~taxable service, or collecting the sales price, add to the sales price the amount of tax due. The~~
22 ~~tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid,~~
23 ~~and is recoverable at law in the same manner as other debts. The tax must be stated and charged~~
24 ~~separately from the sales price, shown separately on the retailer's sales records, and paid by the~~
25 ~~purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the~~
26 ~~collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax~~
27 ~~to or to collect the tax from the purchaser does not affect this liability. It is the intent of this~~
28 ~~Article that the tax be added to the sales price of tangible personal property and services when~~
29 ~~sold at retail and be borne and passed on to the customer, instead of being borne by the retailer.~~

30 The sales tax imposed by this Article is intended to be passed on to the purchaser of a
31 taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax
32 due on an item when the item is sold at retail. The tax is a debt from the purchaser to the
33 retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A
34 retailer is considered to act as a trustee on behalf of the State when it collects tax from the
35 purchaser of a taxable item.'

36 **SECTION 27C.3.(f)** G.S. 105-164.13 reads as rewritten:

37 **'§ 105-164.13. Retail sales and use tax.**

38 ~~The sale at retail and the use, storage, or consumption in this State of the following tangible~~
39 ~~personal property and services items are specifically exempted from the tax imposed by this~~
40 ~~Article:~~

41

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 23 of 43

1 (25) Sales by ~~merchants~~ a merchant on the Cherokee Indian Reservation when
2 ~~such merchants are who is~~ authorized to do business on the Reservation and
3 ~~are paying~~ pays the tribal gross receipts levy to the Tribal Council.

4 ...
5 (60) A service contract for, and the repair, maintenance, or installation of, an item
6 that is exempt from tax under this Article, other than an item exempt from
7 tax under G.S. 105-164.13(32).

8 (61) Admission charges to any of the following recreational or entertainment
9 activities:

- 10 a. An event at an elementary or secondary school.
11 b. A commercial agricultural fair that meets the requirements of
12 G.S. 106-520.1, as determined by the Commissioner of Agriculture.
13 c. A festival or other recreational or entertainment activity that lasts no
14 more than seven consecutive days and is sponsored by a nonprofit
15 entity that is exempt from tax under Article 4 of this Chapter and
16 uses the entire proceeds of the activity exclusively for the entity's
17 nonprofit purpose. This exemption applies to no more than two
18 activities sponsored by the entity during a calendar year.
19 d. An entertainment activity produced by local talent exclusively, for
20 the benefit of religious, charitable, benevolent, or educational
21 purposes, as long as no compensation is paid to the local talent.
22 e. The North Carolina Symphony Society, Incorporated, as specified in
23 G.S. 140-10.1.
24 f. All outdoor historical dramas, as specified in Article 19C of Chapter
25 143 of the General Statutes.
26 g. A youth athletic contest with an admissions price that does not
27 exceed ten dollars (\$10.00) sponsored by a person exempt from
28 income tax under Article 4 of this Chapter. For the purpose of this
29 sub-subdivision, a youth athletic contest means a contest in which
30 each participating athlete is less than 20 years of age.
31 h. A choral or theatrical performance promoted and managed by a
32 nonprofit entity that is exempt from tax under Article 4 of this
33 Chapter.
34 i. A recreational or an entertainment activity exclusively for teenagers
35 and sponsored by a nonprofit entity that is exempt from tax under
36 Article 4 of this Chapter.
37 j. A farm-related entertainment activity offered on land used for bona
38 fide farm purposes as defined in G.S. 153A-340.'

39 **SECTION 27C.3.(g)** G.S. 105-467(a) is amended by adding two new subdivisions

40 to read:

41 (8) The sales price of an item that is delivered or accessed electronically and is
42 subject to the general rate of tax under G.S. 105-164.4(a)(6b).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 24 of 43

1 (9) The gross receipts derived from providing a service subject to the general
2 rate of tax under G.S. 105-164.4(a)(9), (a)(10), or (a)(11).'

3 **SECTION 27C.3.(h)** Section 4 of Chapter 1096 of the 1967 Session Laws, as
4 amended, reads as rewritten:

5 'Sec. 4. Scope of Sales Tax. The sales tax which may be imposed under this division after
6 the holding of a special election is limited to a tax at the rate of one per cent (1%) of: (1) the
7 sale price of ~~those articles of tangible personal property now the items~~ subject to the general
8 rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(1) and (4b);~~ 105-164.4(a)(1),
9 (4b), and (6b); (2) the gross receipts derived from the lease or rental of tangible personal
10 property when the lease or rental of the property is subject to the general rate of sales tax
11 imposed by the State under G.S. 105-164.4(a)(2); (3) the gross receipts derived from the rental
12 of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar public
13 accommodations now subject to the general rate of sales tax imposed by the State under G. S.
14 105-164.4(a)(3); (4) the gross receipts derived from services rendered by laundries, dry
15 cleaners, cleaning plants and similar type businesses now subject to the general rate of sales tax
16 imposed by the State under G.S. 105-164.4(a)(4); (5) The sales price of food and other items
17 that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but are exempt from the
18 State sales and use tax pursuant to G.S. 105-164.13B; ~~and~~ (6) The sales price of prepaid
19 telephone calling service taxed as tangible personal property under G.S. ~~105-164.4(a)(4d).~~ G.S.
20 105-164.4(a)(4d); and (7) The gross receipts derived from providing a service subject to the
21 general rate of tax under G.S. 105-164.4(a)(9), (a)(10), or (a)(11). The sales price of prepaid
22 telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d). The
23 taxes authorized by this division do not apply to sales that are taxable by the State under
24 G.S. 105-164.4 but are not specifically listed in this section.

25 The exemptions and exclusions contained in G.S. 105-164.13 and the sales and use tax
26 holiday contained in G.S. 105-164.13C and G.S. 105-164.13D apply with equal force and like
27 manner to the local sales tax authorized to be imposed and levied under this division. The
28 county shall have no authority, with respect to the local sales and use tax imposed under this
29 division, to change, alter, add, or delete any exemptions or exclusions contained under
30 G.S. 105-164.13.

31 The local sales tax authorized to be imposed and levied under the provisions of this division
32 shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of
33 lodging or accommodations and other taxable transactions which are made, furnished or
34 rendered by retailers whose place of business is located within the taxing county. The tax
35 imposed shall apply to the furnishing of rooms, lodging or other accommodations within the
36 county which are rented to transients. The sourcing principles in G.S. 105-164.4B apply in
37 determining whether the local sales tax applies to a transaction. Provided, however, no tax shall
38 be imposed where the tangible personal property sold is delivered by the retailer or his agent to
39 the purchaser at a point outside this State.'

40 **SECTION 27C.3.(i)** This section becomes effective October 1, 2009, and applies
41 to sales occurring on or after that date. This act does not affect the rights or liabilities of the
42 State, a taxpayer, or another person arising under a statute amended or repealed by this act
43 before the effective date of its amendment or repeal; nor does it affect the right to any refund or

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 25 of 43

1 credit of a tax that accrued under the amended or repealed statute before the effective date of its
2 amendment or repeal. G.S. 105-164.4(a)(10), as enacted by this section, applies to gross
3 receipts received from admissions purchased on or after that date and to gross receipts received
4 on or after that date from other recreational and entertainment activities occurring on or after
5 that date.

6
7 **PART XXVIII. ALCOHOL EXCISE TAX CHANGE**

8
9 **INCREASE TAX ON LIQUOR**

10 **SECTION 27D.2.(a)** G.S. 105-113.80(c) reads as rewritten:

11 '(c) Liquor. - An excise tax of ~~twenty five percent (25%)~~ twenty-six and one-half
12 percent (26.5%) is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price
13 of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse
14 freight and bailment charges, and (ii) a markup for local ABC boards.'

15 **SECTION 27D.2.(b)** This section becomes effective August 1, 2009."

16
17
18 moves to amend the bill on page 5, line ⁷10, by inserting a new section to read:

19 **" SUPPLEMENTAL APPROPRIATIONS**

20 **SECTION 2.1A.** Additional appropriations from the General Fund of the State are
21 made for the biennium ending June 30, 2011, to partially restore reductions made in section 2.1
22 of this act, according to the following schedule:

23
24 ↙

	2009-2010	2010-2011
26 HEALTH AND HUMAN SERVICES		
27 Child Care Subsidy Rate Reduction	3,977,578 R	3,977,578 R
28 Smart Start Funding	20,000,000 R	20,000,000 R
29 Local Management Entities System Management Funds	4,000,000 R	4,857,331 R
30 CAP/MR-DD Reduction in State Supplemental Funds	8,000,000 R	8,000,000 R
31 State Funded Services	50,000,000 R	50,000,000 R
32 Direct Payments to Providers	7,100,000 R	7,100,000 R
33 Reduce Funding for Accreditation of		
34 Local Health Department	700,000 R	700,000 R
35 Eliminate Funding for the Early Hearing Program	171,000 R	171,000 R
36 Eliminate Funding		
37 for Second Dose Chicken Pox Vaccine	1,223,027 R	1,233,027 R
38 Reduce Oral Health Program Funds	3,388,418 R	3,388,413 R
39 Reduce Funding Office of Chief Medical Examiner	80,000 R	80,000 R
40 Reduce Division of Public Health Contract Funds	5,000,000 R	5,000,000 R
41 Establish/Increase Emergency Room Co-payments		
42 for Non-emergency Visits	382,665 R	482,728 R
43 Health Choice Enrollment Freeze	2,542,557 R	2,542,557 R

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 26 of 43

1	Adjust Continuation Budget to FY2008-2009		
2	Authorized Budget Level	15,207,242 R	13,240,268 R
3	Reduce Funds for Child Advocacy Centers	115,000 R	115,000 R
4	Reduce Funds for NC Reach	1,500,000 R	1,500,000 R
5	Recovery Funds for Foster Care and		
6	Adoption Assistance	-636,719 NR	-325,671 NR
7	Reduce State Aid to Counties	5,473,985 R	5,473,985 R
8	Decrease Foster Care & Adoption Assistance Rates	-1,174,026 R	1,122,638 R
9	Reduce Family Resource Center Funds	229,151 R	229,151 R
10	Service Rate Adjustment	64,767 R	64,767 R
11	Reduce Basic Support Case Services	3,612,025 R	3,612,025 R
12	Reduce Funds for Independent Living	1,500,000 R	1,500,000 R
13	Service Rate Adjustment	69,038 R	69,038 R
14	Reduce Home and Community Care Block Grant	2,594,744 R	2,594,744 R
15	Provider Rate Reduction	65,791,000 R	67,451,725 R
16	Modify Personal Care Services Benefit	34,000,000 R	40,800,000 R
17	Reduce Personal Care Services in Adult Care Homes	8,000,000 R	8,000,000 R
18	Eliminates PT/OT/ST	15,633,333 R	18,760,000 R
19	Reduces Adult Optical	3,201,911 R	3,842,293 R
20	Dental Coverage	16,726,329 R	20,905,072 R
21	Dental Policy Adjustments	3,689,582 R	4,427,500 R
22	Orthotics and prosthetics	2,267,877 R	2,885,284 R
23	Emergency Room Copayment		
24	for Nonemergency Visits	2,975,070 R	3,945,037 R
25	CCNC Savings	30,917,506 R	43,010,007 R
26	Growth	8,544,885 R	17,297,851 R
27	Phased-Out County Share	13,740,196 R	16,052,019 R
28	Reduction in Medical Assistance Payments	-49,965,249 NR	-38,805,850 NR
29			
30	Totals	290,642,892	345,299,517
31			
32	DEPARTMENT OF ADMINISTRATION		
33	Adjust Continuation Budget-for utilities	1,667,388	1,140,952
34	Veterans Services Office	12,032	12,032
35	Domestic Violence	170,203	170,203
36	Telecommunications Office	371,989	655,621
37	Rape Crisis	195,175	195,175
38	Veterans Affairs	175,968	175,968
39			
40	OFFICE OF STATE PERSONNEL		
41	Reduce Various Line Items	100,000	100,000
42			
43	STATE ETHICS COMMISSION		

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 27 of 43

1	Reduce State Ethics Commission	81,752	81,752
2			
3	DEPARTMENT OF CULTURAL RESOURCES		
4	Libraries	1,553,583	1,936,979
5	Grassroots	271,024	338,780
6	Basic Grants	387,332	484,155
7	Museum of Art& Tyron Palace Reserve	1,456,484	2,809,565
8	Symphony	425	425
9	Restoring filled positions	272,361	276,132
10			
11	DEPARTMENT OF REVENUE		
12	PSA-Rev	424,120	424,120
13			
14	HOUSING FINANCE AGENCY		
15	HFA	1,000,000	1,000,000
16			
17	DEPARTMENT OF THE STATE TREASURER		
18	Adjust Continuation Budget-for utilities	221,000	221,000
19	Fire Rescue - Management Flexibility Reserve		139,703
20	Pension Fund	317,863	317,863
21			
22	OFFICE OF THE STATE CONTROLLER		
23	Management Flexibility Reserve		229,619
24	Adjust Continuation Budget	312,798	
25			
26	GOVERNOR		
27	Reduce Exp. Accounts	50,000	50,000
28			
29	OFFICE OF STATE BUDGET AND MANAGEMENT		
30	Reduce Various Accounts	50,000	50,000
31			
32	STATE BOARD OF ELECTIONS		
33	Last four positions	89,021	89,021
34			
35	SECRETARY OF STATE		
36	4.25 filled positions	155,514	170,967
37			
38	OFFICE OF ADMINISTRATIVE HEARINGS		
39	Reduce Various Operating Accounts	64,689	64,689
40			
41	LIEUTENANT GOVERNOR		
42	Reduce Various Operating Accounts	22,831	22,831
43			

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
 Senate Bill 202

AMENDMENT NO. 3
 (to be filled in by
 Principal Clerk)

S202-ASVxf-21 [v.6]

Page 28 of 43

1	DEPARTMENT OF INSURANCE		
2	Reduce Various Operating Accounts	316,449	316,449
3			
4	OFFICE OF STATE AUDITOR		
5	Four auditor positions	260,000	260,000
6			
7	JUDICIAL DEPARTMENT		
8	Vacant AOC positions (179.0)	9,498,004	9,498,004
9	VWLA Positions (155.0)	7,019,017	7,019,017
10			
11	DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION		
12	DJJDP Continuation Budget		3,100,000
13	JCPC County Allocation	3,472,929	3,472,929
14			
15	DEPARTMENT OF CORRECTION		
16	Jail Misdemeanant Payments	5,000,000	5,000,000
17	DOC Continuation Budget	50,010,050	60,610,050
18			
19	DEPARTMENT OF PUBLIC INSTRUCTION		
20	Restore Teachers to Classrooms		
21	(Maintains K-3 class size at 08-09 levels)	138,958,000	198,500,000
22	At Risk		70,000,000
23	50,000,000		
24	Low Wealth	4,853,701	9,707,403
25	Instructional Support Positions	19,367,181	20,772,741
26	School Building Administration	17,586,720	17,586,720
27	Restore LEA Flexibility Reduction	2,871,551	9,635,289
28			
29	COMMUNITY COLLEGE SYSTEM OFFICE		
30	Restore All Tuition Waivers	16,362,847	16,362,847
31	Restore Cuts to CC Personnel	10,000,000	14,000,000
32			
33	UNIVERSITY OF NORTH CAROLINA		
34	Restore Cuts to University Personnel	75,000,000	80,000,000
35			
36	DEPARTMENT OF AGRICULTURE		
37	Oper. Res. - Barn	152,799	156,925
38	Oper. Res. - Lab	43,500	79,000
39	Oper. Res.- Vet Services - Rendering	75,000	75,000
40	Operating - Cell Phones	60,909	60,909
41	FFA to 4% & 6%	1,980	1,980
42	Marketing - Ag Review	25,000	25,000
43	Ag in Classroom 4% & 6%	990	990

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
 Senate Bill 202

AMENDMENT NO. 3
 (to be filled in by
 Principal Clerk)

S202-ASVxf-21 [v.6]

Page 29 of 43

1			
2	DEPARTMENT OF LABOR		
3	Wage & Hour	94,796	94,796
4	Operating - Cell Phones	27,164	27,164
5			
6	DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES		
7	Oper. Res.- Nature Research Cntr	242,159	855,620
8	Oper. Res.- Parks	1,537,849	1,342,669
9	Operating - Comm Travel/ Subsistence	170,399	170,399
10	Forestry Equipment	-	112,556
11	State Parks	-	262,037
12	Grassroots to 4% & 6%	139,254	139,254
13	Partnerships to 4% & 6%	20,690	20,690
14			
15	DEPARTMENT OF COMMERCE		
16	Oper. Res. - China Trade Office	175,000	175,000
17	Operating - Cell Phones	34,682	34,682
18	BI - Contractors	720,868	720,868
19	Heritage Tourism	56,125	56,125
20	State Aid - Land Loss to 4% & 6%	15,500	15,700
21	State Aid - Institute of Minority Econ. Dev. to 4% & 6%	106,300	119,900
22	State Aid - NC Assoc. of CDCs to 4% & 6%	44,300	47,300
23	State Aid - NC Minority Support Cntr to 4% & 6%	143,500	143,400
24	State Aid - NC Comm. Dev. Initiative to 4% & 6%	209,000	209,200
25	State Aid - e-NC Authority to 4% & 6%	20,200	19,300
26	State Aid - High Point Furniture Market to 4% & 6%	36,600	35,200
27	NC Biotech to 4% & 6%	617,000	616,900
28	Rural Economic Development Center to 4% & 6%	228,436	248,436"; and

29
 30 On page 11, lines ^{6 44 DW}~~12-50~~, by deleting the lines.

31
 32 **EDUCATION**

33
 34 moves to amend the Committee Report on page F3, item 20, by rewriting the item to read:

35
 36 **"19. Increase Class Size in Grades 4-12** **(\$183,747,848) (\$264,638,920) R**

37 Decreases funding for the Classroom Teachers allotment
 38 consistent with increasing the student-to-teacher funding
 39 allotment ratio currently set by the State Board of Education
 40 for grades 4-12 by 2 in FY 2009-10 and by 3 in FY 2010-11.
 41 The related provision, section 7.23, increases the allowable
 42 maximum district-wide class size average and maximum individual
 43 class size in grades 4-12 by 2 in FY 2009-10 and 3 in FY 2010-11.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 30 of 43

1 Student-to-teacher ratios in grades K-3 will remain unchanged."; and

2
3 Further moves to amend the committee report on page F2, item 10, by deleting the item; and

4
5 Further moves to amend the committee report on page F4, item 30, by deleting the item; and

6
7 Further moves to amend the committee report on page F4, item 25, by deleting the item; and

8
9 Further moves to amend the committee report on page F4, item 26, by deleting the item; and

10
11 Further moves to amend the committee report on page F5, item 37, by reducing the cut for the
12 2009-2010 fiscal year by \$5,135,289 in recurring funds, adding a nonrecurring cut for the
13 2009-2010 fiscal year of \$2,263,738, and reducing the cut for the 2010-2011 fiscal year by
14 \$9,635,289; and

15
16 Further moves to amend the committee report on page F14, items 89 and 90, by deleting the
17 items; and

18
19 Further moves to amend the committee report on page F10, item 61, by reducing the cut for the
20 2009-2010 fiscal year by \$10,000,000 and by reducing the cut for the 2010-2011 fiscal year by
21 \$14,000,000; and

22
23 Further moves to amend the committee report on page F16, item 97, by reducing the cut for the
24 2009-2010 fiscal year by \$75,000,000 and by reducing the cut for the 2010-2011 fiscal year by
25 \$80,000,000;

26
27 and moves to amend the bill on page 28, line ~~47~~⁴⁰, through page 32, line ~~14~~¹⁰, by deleting the lines
28 and substituting the following:

29 **"USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES**

30 **SECTION 7.3.(a)** Use of Funds for Supplemental Funding. – All funds received
31 pursuant to this section shall be used only: (i) to provide instructional positions, instructional
32 support positions, teacher assistant positions, clerical positions, school computer technicians,
33 instructional supplies and equipment, staff development, and textbooks and (ii) for salary
34 supplements for instructional personnel and instructional support personnel. Local boards of
35 education are encouraged to use at least twenty-five percent (25%) of the funds received
36 pursuant to this section to improve the academic performance of children who are performing
37 at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children
38 who are performing at Level I or II in grades 4 and 7.

39 **SECTION 7.3.(b)** Definitions. – As used in this section:

- 40 (1) "Anticipated county property tax revenue availability" means the
41 county-adjusted property tax base multiplied by the effective State average
42 tax rate.
43 (2) "Anticipated total county revenue availability" means the sum of the:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 31 of 43

- 1 a. Anticipated county property tax revenue availability,
- 2 b. Local sales and use taxes received by the county that are levied under
- 3 Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of
- 4 Chapter 105 of the General Statutes,
- 5 c. Sales tax hold harmless reimbursement received by the county under
- 6 G.S. 105-521, and
- 7 d. Fines and forfeitures deposited in the county school fund for the most
- 8 recent year for which data are available.
- 9 (3) "Anticipated total county revenue availability per student" means the
- 10 anticipated total county revenue availability for the county divided by the
- 11 average daily membership of the county.
- 12 (4) "Anticipated State average revenue availability per student" means the sum
- 13 of all anticipated total county revenue availability divided by the average
- 14 daily membership for the State.
- 15 (5) "Average daily membership" means average daily membership as defined in
- 16 the North Carolina Public Schools Allotment Policy Manual, adopted by the
- 17 State Board of Education. If a county contains only part of a local school
- 18 administrative unit, the average daily membership of that county includes all
- 19 students who reside within the county and attend that local school
- 20 administrative unit.
- 21 (6) "County-adjusted property tax base" shall be computed as follows:
- 22 a. Subtract the present-use value of agricultural land, horticultural land,
- 23 and forestland in the county, as defined in G.S. 105-277.2, from the
- 24 total assessed real property valuation of the county,
- 25 b. Adjust the resulting amount by multiplying by a weighted average of
- 26 the three most recent annual sales assessment ratio studies,
- 27 c. Add to the resulting amount the:
- 28 1. Present-use value of agricultural land, horticultural land, and
- 29 forestland, as defined in G.S. 105-277.2,
- 30 2. Value of property of public service companies, determined in
- 31 accordance with Article 23 of Chapter 105 of the General
- 32 Statutes, and
- 33 3. Personal property value for the county.
- 34 (7) "County-adjusted property tax base per square mile" means the
- 35 county-adjusted property tax base divided by the number of square miles of
- 36 land area in the county.
- 37 (8) "County wealth as a percentage of State average wealth" shall be computed
- 38 as follows:
- 39 a. Compute the percentage that the county per capita income is of the
- 40 State per capita income and weight the resulting percentage by a
- 41 factor of five-tenths,
- 42 b. Compute the percentage that the anticipated total county revenue
- 43 availability per student is of the anticipated State average revenue

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 7
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 32 of 43

- 1 availability per student and weight the resulting percentage by a
2 factor of four-tenths,
3 c. Compute the percentage that the county-adjusted property tax base
4 per square mile is of the State-adjusted property tax base per square
5 mile and weight the resulting percentage by a factor of one-tenth,
6 d. Add the three weighted percentages to derive the county wealth as a
7 percentage of the State average wealth.
8 (9) "Effective county tax rate" means the actual county tax rate multiplied by a
9 weighted average of the three most recent annual sales assessment ratio
10 studies.
11 (10) "Effective State average tax rate" means the average of effective county tax
12 rates for all counties.
13 (11) "Local current expense funds" means the most recent county current expense
14 appropriations to public schools, as reported by local boards of education in
15 the audit report filed with the Secretary of the Local Government
16 Commission pursuant to G.S. 115C-447.
17 (12) "Per capita income" means the average for the most recent three years for
18 which data are available of the per capita income according to the most
19 recent report of the United States Department of Commerce, Bureau of
20 Economic Analysis, including any reported modifications for prior years as
21 outlined in the most recent report.
22 (13) "Sales assessment ratio studies" means sales assessment ratio studies
23 performed by the Department of Revenue under G.S. 105-289(h).
24 (14) "State average current expense appropriations per student" means the most
25 recent State total of county current expense appropriations to public schools,
26 as reported by local boards of education in the audit report filed with the
27 Secretary of the Local Government Commission pursuant to G.S. 115C-447.
28 (15) "State average adjusted property tax base per square mile" means the sum of
29 the county-adjusted property tax bases for all counties divided by the
30 number of square miles of land area in the State.
31 (16) "Supplant" means to decrease local per student current expense
32 appropriations from one fiscal year to the next fiscal year.
33 (17) "Weighted average of the three most recent annual sales assessment ratio
34 studies" means the weighted average of the three most recent annual sales
35 assessment ratio studies in the most recent years for which county current
36 expense appropriations and adjusted property tax valuations are available. If
37 real property in a county has been revalued one year prior to the most recent
38 sales assessment ratio study, a weighted average of the two most recent sales
39 assessment ratios shall be used. If property has been revalued the year of the
40 most recent sales assessment ratio study, the sales assessment ratio for the
41 year of revaluation shall be used.

42 **SECTION 7.3.(c)** Eligibility for Funds. -- Except as provided in subsection (g) of
43 this section, the State Board of Education shall allocate these funds to local school

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 33 of 43

1 administrative units located in whole or in part in counties in which the county wealth as a
2 percentage of the State average wealth is less than one hundred percent (100%).

3 **SECTION 7.3.(d)** Allocation of Funds. – Except as provided in subsection (f) of
4 this section, the amount received per average daily membership for a county shall be the
5 difference between the State average current expense appropriations per student and the current
6 expense appropriations per student that the county could provide given the county's wealth and
7 an average effort to fund public schools. (To derive the current expense appropriations per
8 student that the county could be able to provide given the county's wealth and an average effort
9 to fund public schools, multiply the county's wealth as a percentage of State average wealth by
10 the State average current expense appropriations per student.) The funds for the local school
11 administrative units located in whole or in part in the county shall be allocated to each local
12 school administrative unit located in whole or in part in the county based on the average daily
13 membership of the county's students in the school units. If the funds appropriated for
14 supplemental funding are not adequate to fund the formula fully, each local school
15 administrative unit shall receive a pro rata share of the funds appropriated for supplemental
16 funding.

17 **SECTION 7.3.(e)** Formula for Distribution of Supplemental Funding Pursuant to
18 This Section Only. – The formula in this section is solely a basis for distribution of
19 supplemental funding for low-wealth counties and is not intended to reflect any measure of the
20 adequacy of the educational program or funding for public schools. The formula is also not
21 intended to reflect any commitment by the General Assembly to appropriate any additional
22 supplemental funds for low-wealth counties.

23 **SECTION 7.3.(f)** Minimum Effort Required. – Counties that had effective tax
24 rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that
25 had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall
26 receive reduced funding under this section. This reduction in funding shall be determined by
27 subtracting the amount that the county would have received pursuant to Section 17.1(g) of
28 Chapter 507 of the 1995 Session Laws from the amount that the county would have received if
29 qualified for full funding and multiplying the difference by ten percent (10%). This method of
30 calculating reduced funding shall apply one time only. This method of calculating reduced
31 funding shall not apply in cases in which the effective tax rate fell below the statewide average
32 effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the
33 minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507
34 of the 1995 Session Laws. If the county documents that it has increased the per student
35 appropriation to the school current expense fund in the current fiscal year, the State Board of
36 Education shall include this additional per pupil appropriation when calculating minimum
37 effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

38 **SECTION 7.3.(g)** Nonsupplant Requirement. – A county in which a local school
39 administrative unit receives funds under this section shall use the funds to supplement local
40 current expense funds and shall not supplant local current expense funds. For the 2009-2011
41 fiscal biennium, the State Board of Education shall not allocate funds under this section to a
42 county found to have used these funds to supplant local per student current expense funds. The
43 State Board of Education shall make a finding that a county has used these funds to supplant

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 34 of 43

1 local current expense funds in the prior year, or the year for which the most recent data are
2 available, if:

- 3 (1) The current expense appropriation per student of the county for the current
4 year is less than ninety-five percent (95%) of the average of the local current
5 expense appropriations per student for the three prior fiscal years; and
6 (2) The county cannot show: (i) that it has remedied the deficiency in funding or
7 (ii) that extraordinary circumstances caused the county to supplant local
8 current expense funds with funds allocated under this section. The State
9 Board of Education shall adopt rules to implement this section.

10 **SECTION 7.3.(h) Reports.** – The State Board of Education shall report to the Joint
11 Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties
12 have supplanted funds.

13 **SECTION 7.3.(i) Department of Revenue Reports.** – The Department of Revenue
14 shall provide to the Department of Public Instruction a preliminary report for the current fiscal
15 year of the assessed value of the property tax base for each county prior to March 1 of each
16 year and a final report prior to May 1 of each year. The reports shall include for each county the
17 annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of
18 total real property represented by the present-use value of agricultural land, horticultural land,
19 and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies
20 determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv)
21 personal property.";

22 and on page 39, line ⁴⁷~~49~~ through page 40, line ⁴~~6~~, by deleting the lines and substituting the
23 following:
24

25 **"INCREASE CLASS SIZE**

26 **SECTION 7.23.** Notwithstanding any other provision of law, the allotment ratios,
27 the maximum class size, and the maximum average class size limits for grades 4-12 in the
28 public schools shall be two students higher beginning with the 2009-2010 school year than they
29 were for the 2008-2009 school year.

30 Notwithstanding any other provision of law, the allotment ratios, the maximum
31 class size, and the maximum average class size limits for grades 4-12 in the public schools shall
32 be three students higher beginning with the 2010-2011 school year than they were for the
33 2008-2009 school year."; and

34 on page 51, line ³³~~40~~, through page 54, line ²⁶~~35~~, by deleting the lines; and

35
36
37 on page 57, by inserting on line ¹²~~21~~ the following new section to read:

38 **" MANAGEMENT FLEXIBILITY REDUCTION/COMMUNITY COLLEGES**

39 **SECTION 8.24.** The management flexibility reduction for the North Carolina
40 Community College System shall be allocated by the State Board of Community Colleges in a
41 manner that accounts for the unique needs of each college and provides for the equitable
42 distribution of funds to the institutions consistent with G.S. 115D-5(a). Before taking
43 reductions to instructional budgets, the community colleges shall consider reducing budgets for

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. _____

(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 35 of 43

1 senior and middle management personnel and for programs that have both low-enrollment and
2 low-postgraduate success. Colleges shall minimize the impact on student support services and
3 on the retraining of dislocated workers. The community colleges shall also review their
4 institutional funds to determine whether there are monies available in those funds that can be
5 used to assist with operating costs before taking reductions in instructional budgets."; and

6
7 on page ⁴⁸~~48~~, line ⁴⁷~~47~~, by inserting the following new section to read:

8 **"REPEAL SENIOR CITIZEN TUITION WAIVER FOR UNC CONSTITUENT**
9 **INSTITUTIONS**

10 **SECTION 9.29.(a)** G.S. 115B-2(a)(1) is repealed.

11 **SECTION 9.29.(b)** G.S. 115B-2.1 is repealed.

12 **SECTION 9.29.(c)** G.S. 115B-5(a) is repealed.

13 **SECTION 9.29.(d)** G.S. 115D-5(b) reads as rewritten:

14 '(b) In order to make instruction as accessible as possible to all citizens, the teaching of
15 curricular courses and of noncurricular extension courses at convenient locations away from
16 institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata
17 portion of the established regular tuition rate charged a full-time student shall be charged a
18 part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of
19 Community Colleges shall establish a uniform registration fee, or a schedule of uniform
20 registration fees, to be charged students enrolling in extension courses for which instruction is
21 financed primarily from State funds; provided, however, that the State Board of Community
22 Colleges may provide by general and uniform regulations for waiver of tuition and registration
23 fees for persons not enrolled in elementary or secondary schools taking courses leading to a
24 high school diploma or equivalent certificate, for training courses for volunteer firemen, local
25 fire department personnel, volunteer rescue and lifesaving department personnel, local rescue
26 and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT)
27 members when the REACT team is under contract to a county as an emergency response
28 agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all
29 full-time custodial employees of the Department of Correction, employees of the Department's
30 Division of Community Corrections and employees of the Department of Juvenile Justice and
31 Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and
32 the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in
33 courses conducted under the New and Expanding Industry Program, clients of sheltered
34 workshops, clients of adult developmental activity programs, students in Health and Human
35 Services Development Programs, juveniles of any age committed to the Department of Juvenile
36 Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates,
37 members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as
38 administered under Article 5 of Chapter 127A of the General Statutes, and elementary and
39 secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation
40 (CPR). Provided further, tuition shall be waived for senior citizens attending institutions
41 operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition
42 Waiver for Senior Citizens. Chapter. Provided further, tuition shall also be waived for all
43 courses taken by high school students at community colleges, including students in early

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 36 of 43

1 college and middle college high school programs, in accordance with G.S. 115D-20(4) and this
2 section.""; and

3
4 **DHHS**

5 ^{31 35}
6 on page 80, lines ~~36-40~~, by deleting the lines; and

7
8 on page ~~88~~, lines ~~4-7~~, by deleting the lines; and

9 ^{87 line 49 to page 88 line 3}
10 on page 96, line ~~25~~, by deleting the amount "\$390.00" and substituting the amount "\$475.00";
11 and ²³

12
13 on page 96, line ~~26~~, by deleting the amount "\$440.00" and substituting the amount "\$581.00";
14 and ²⁴

15
16 on page 96, line ~~27~~, by deleting the amount "\$490.00" and substituting the amount "\$634.00";
17 and ²⁵

18
19 on page 96, line ~~30~~, by deleting the amount "\$390.00" and substituting the amount "\$475.00";
20 and ²⁸

21
22 on page 96, line ~~31~~, by deleting the amount "\$440.00" and substituting the amount "\$581.00";
23 and ²⁹

24
25 on page 96, line ~~32~~, by deleting the amount "\$490.00" and substituting the amount "\$634.00";
26 and ³⁰

27
28 on page 99, lines ~~5-6~~ ⁴⁻⁵, by deleting the words "three million one hundred sixty-eight thousand
29 two hundred fifty dollars (\$3,168,250)" and substituting the words "one million five hundred
30 thousand dollars (\$1,500,000); and

31
32 on page 101, line 36, by deleting the words "five and five tenths percent (5.5%)" and
33 substituting the words "three and six hundredths percent (3.06%); and

34
35 on page 101, line 37, by deleting the words "six percent (6.0%)" and substituting the words
36 "three and fifty-six hundredths percent (3.56%); and

37
38 on page 107, line 21, by rewriting the line to read:

39
40 "(20) Physical therapy, occupational therapy, and speech therapy. – Services for
41 adults and EPSDT eligible children. Payments are to be made only to
42 qualified providers at rates negotiated by the Department of Health and
43 Human Services."; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 37 of 43

1
2 on page 111, lines 17-19, by deleting the lines; and
3
4 on page 118, line 50, by deleting the words "five and five tenths percent (5.5%)" and
5 substituting the words "three and six hundredths percent (3.06%); and
6
7 on page 118, line 51, by deleting the words "six percent (6.0%)" and substituting the words
8 "three and fifty-six hundredths percent (3.56%); and
9

10
11 on page 119, lines 14-16, by deleting the lines; and
12

13 **JPS**

14
15 moves to amend the House Appropriations Committee Report on page I-1, Item 2, by deleting
16 that item;
17
18 and further moves to amend the Committee Report on page I-2, Item 8 by deleting that item;
19
20 and further moves to amend the Committee Report on page I-9, Item 44 by decreasing the
21 reduction for the 2010-2011 fiscal year by \$3,100,000;
22
23 and further moves to amend the Committee Report on page I-10, Item 56 by deleting that item;
24
25 and further moves to amend the Committee Report on page I-12, Item 67 by decreasing the
26 reduction for the 2009-2010 fiscal year by \$50,010,050 and for the 2011-2012 fiscal year by
27 decreasing the reduction by \$60,610,050;
28
29 and further moves to amend the Committee Report on page I-12, Item 70 by deleting that item;
30
31 moves to amend the bill on page 180, line 51 through line 181, line 17, by deleting the lines and
32 inserting the following:
33

34 **"DIVIDE PROSECUTORIAL DISTRICT 11 INTO DISTRICTS 11A AND 11B**

35 **'SECTION 15.17E.(a)** G.S. 7A-60(a1) reads as rewritten:

36 "(a1) The counties of the State are organized into prosecutorial districts, and each district
37 has the counties and the number of full-time assistant district attorneys set forth in the
38 following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
...		
44 <u>11A</u>	Harnett, Johnston, Lee	<u>199</u>

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 38 of 43

1 11B Johnston 10

2 "

3 **SECTION 15.17E.(b)** The district attorney position established for District 11B by
4 subsection (a) of this section shall be filled by the district attorney currently serving District 11
5 who resides in Johnston County. A district attorney for District 11A shall be elected in the 2010
6 election for a four-year term commencing January 1, 2011.

7 **SECTION 15.17E.(c)** This section becomes effective January 1, 2011.""; and

8
9 Section 15.17C & 15.17D

10 further moves to amend the bill on page 177, line 12, through page 180, line 49, by deleting the
11 lines;

12
13 further moves amend the bill on page 181, line 22, through page 184, line 9, by deleting the
14 lines; and

15
16 further moves to amend the bill on page 220, lines 4-8 , by deleting the lines; and

17
18 **NER**

19
20 on page 152, line 23 through 154, line 30, by deleting the lines and substituting the following:

21
22 **"GRASSROOTS SCIENCE PROGRAM**

23 **SECTION 13.7.(a)** Of the funds appropriated in this act to the Department of
24 Environment and Natural Resources for the Grassroots Science Program, the sum of three
25 million three hundred forty-two thousand eighty-six dollars (\$3,342,086) for the 2009-2010
26 fiscal year and the sum of three million two hundred seventy-two thousand four hundred
27 fifty-nine dollars (\$3,272,459) for the 2010-2011 fiscal year is allocated as grants-in-aid for
28 each fiscal year as follows:

	2009-2010	2010-2011	
29			
30			
31	Aurora Fossil Museum	\$56,695	\$55,514
32	Cape Fear Museum	\$154,567	\$151,347
33	Carolina Raptor Center	\$107,687	\$105,444
34	Catawba Science Center	\$140,502	\$137,575
35	Colburn Earth Science Museum, Inc.	\$71,563	\$70,072
36	Core Sound Waterfowl Museum	\$48,000	\$47,000
37	Discovery Place	\$636,350	\$623,093
38	Eastern NC Regional Science Center	\$48,000	\$47,000
39	Fascinate-U	\$77,829	\$76,208
40	Granville County Museum Commission,		
41	Inc.–Harris Gallery	\$54,165	\$53,037
42	Greensboro Children's Museum	\$129,673	\$126,971
43	The Health Adventure Museum of Pack		

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 39 of 43

1	Place Education, Arts and		
2	Science Center, Inc.	\$149,387	\$146,274
3	Highlands Nature Center	\$76,097	\$74,512
4	Imagination Station	\$82,593	\$80,871
5	The Iredell Museums, Inc.	\$58,854	\$57,628
6	Kidsenses	\$78,031	\$76,405
7	Museum of Coastal Carolina	\$74,899	\$73,339
8	The Natural Science Center		
9	of Greensboro, Inc.	\$178,900	\$175,173
10	North Carolina Museum of Life		
11	and Science	\$364,633	\$357,036
12	Pisgah Astronomical Research Institute	\$48,000	\$47,000
13	Port Discover: Northeastern		
14	North Carolina's Center for		
15	Hands-On Science, Inc.	\$48,000	\$47,000
16	Rocky Mount Children's Museum	\$69,364	\$67,919
17	Schiele Museum of Natural History		
18	and Planetarium, Inc.	\$220,365	\$215,774
19	Sci Works Science Center and		
20	Environmental Park of Forsyth County	\$140,639	\$137,709
21	Sylvan Heights Waterfowl Park		
22	and Eco-Center	\$48,000	\$47,000
23	Western North Carolina Nature Center	\$108,363	\$106,106
24	Wilmington Children's Museum	\$70,930	\$69,452
25			
26	Total	\$3,342,086	\$3,272,459.

27 **SECTION 13.7.(b)** No later than March 1, 2010, the Department of Environment
28 and Natural Resources shall report to the Fiscal Research Division all of the following
29 information for each museum that receives funds under this section:

- 30 (1) The actual operating budget for the 2008-2009 fiscal year.
31 (2) The proposed operating budget for the 2009-2010 fiscal year.
32 (3) The total attendance at the museum during the 2009 calendar year.

33 **SECTION 13.7.(c)** No later than March 1, 2011, the Department of Environment
34 and Natural Resources shall report to the Fiscal Research Division all of the following
35 information for each museum that receives funds under this section:

- 36 (1) The actual operating budget for the 2009-2010 fiscal year.
37 (2) The proposed operating budget for the 2010-2011 fiscal year.
38 (3) The total attendance at the museum during the 2010 calendar year.

39 **SECTION 13.7.(d)** As a condition for qualifying to receive funding under this
40 section, all of the following documentation shall, no later than November 1 of each year of the
41 2009-2011 biennium, be submitted for each museum under this section to the Department of
42 Environment and Natural Resources for fiscal years ending between July 1, 2007, and June 30,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 40 of 43

1 2008, and only those costs that are properly documented under this subsection are allowed by
2 the Department in calculating the distribution of funds under this section:

- 3 (1) Each museum under this section shall submit its IRS (Internal Revenue
4 Service) Form 990 to show its annual operating expenses, its annual report,
5 and a reconciliation that explains any differences between expenses as
6 shown on the IRS Form 990 and the annual report.
- 7 (2) Each friends association of a museum under this section shall submit its IRS
8 Form 990 to show its reported expenses for the museum, its annual report,
9 and a reconciliation that explains any differences between expenses as
10 shown on the IRS Form 990 and the annual report, unless the association
11 does not have both an IRS Form 990 and an annual report available, in
12 which case, it shall submit either an IRS Form 990 or an annual report.
- 13 (3) The chief financial officer of each county or municipal government that
14 provides funds for the benefit of the museum shall submit a detailed signed
15 statement of documented costs spent for the benefit of the museum that
16 includes documentation of the name, address, title, and telephone number of
17 the person making the assertion that the museum receives funds from the
18 county or municipality for the benefit of the museum.
- 19 (4) The chief financial officer of each county or municipal government or each
20 friends association that provides indirect or allocable costs that are not
21 directly charged to a museum under this section but that benefit the museum
22 shall submit in the form of a detailed statement enumerating each cost by
23 type and amount that is verified by the financial officer responsible for the
24 completion of the documentation and that includes the name, address, title,
25 and telephone number of the person making the assertion that the county,
26 municipality, or association provides indirect or allocable costs to the
27 museum.

28 **SECTION 13.7.(e)** As used in subsection (d) of this section, "friends association"
29 means a nonprofit corporation established for the purpose of supporting and assisting a
30 museum that receives funding under this section.

31 **SECTION 13.7.(f)** The Department of Environment and Natural Resources shall
32 study the advisability of the Department developing for museums that are members of the
33 Grassroots collaborative, a competitive and need-based grant program for operating expense
34 support, to be implemented and administered by the Office of Environmental Education within
35 the Department, and shall study the advisability of using this competitive and need-based grant
36 program for the 2011-2012 fiscal year and thereafter for specific museums that are members of
37 the Grassroots collaborative in lieu of the allocations provided in subsection (a) of this section.
38 In conducting this study, the Department shall, in consultation with the Fiscal Research
39 Division and the Grassroots collaborative, consider establishing a process for applying for these
40 grants, criteria for evaluating applications, and a process for allocating grants. The process and
41 criteria should include giving special consideration to small museums and to the variation in
42 access to development staff. No later than May 1, 2010, the Department shall submit a report to
43 the Joint Legislative Commission on Governmental Operations, the House and Senate

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 41 of 43

1 Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research
2 Division on the results of its study under this section, including its findings, recommendations,
3 and any legislative or administrative proposals.; and

4
5 on page 172, line 40 through 173, line 8, by deleting the lines and substituting the following:

6
7 **"OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS**

8 **SECTION 14.17.(a)** Of the funds appropriated in this act to the North Carolina
9 Rural Economic Development Center, Inc. (Rural Center), the sum of three hundred forty-three
10 thousand dollars (\$343,000) for the 2009-2010 fiscal year and the sum of three hundred
11 thirty-six thousand dollars (\$336,000) for the 2010-2011 fiscal year shall be equally distributed
12 among the certified Opportunities Industrialization Centers (OI Centers).

13 **SECTION 14.17.(b)** By September 1 of each year, and more frequently as
14 requested, the Rural Center shall report to the Joint Legislative Commission on Governmental
15 Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to
16 subsection (a) of this section. The report shall include data for each OI Center on all itemized
17 expenditures and all fund sources for the prior State fiscal year. The report shall also contain a
18 written narrative on prior fiscal year program activities, objectives, and accomplishments that
19 were funded with funds appropriated in subsection (a) of this section.

20 **SECTION 14.17.(c)** The Rural Center shall ensure that each OI Center files
21 annually with the State Auditor a financial statement in the form and on the schedule prescribed
22 by the State Auditor.

23 **SECTION 14.17.(d)** No funds appropriated under this act shall be released to an
24 OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as
25 that term is defined in G.S. 105-243.1, at the federal or State level."; and

26
27 On page 171, line 6 through page 172, line 2, by deleting the lines and substituting the
28 following:

29 **"RURAL ECONOMIC DEVELOPMENT CENTER**

30 **SECTION 14.15.(a)** Of the funds appropriated in this act to the North Carolina
31 Rural Economic Development Center, Inc. (Rural Center), the sum of four million six hundred
32 two thousand four hundred thirty-six dollars (\$4,602,436) for the 2009-2010 fiscal year and the
33 sum of four million five hundred twenty-seven thousand four hundred thirty-six dollars
34 (\$4,527,436) for the 2010-2011 fiscal year shall be allocated as follows:

	2009-2010	2010-2011
Center Administration, Technical Assistance, & Oversight	\$1,555,000	\$1,523,000
Research and Demonstration Grants	\$351,000	\$344,000
Institute for Rural Entrepreneurship	\$136,000	\$134,000
Community Development Grants	\$987,436	\$987,436
Microenterprise Loan Program	\$185,000	\$182,000
Water/Sewer/Business Development Matching Grants	\$840,000	\$821,000

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 42 of 43

1	Statewide Water/Sewer Database	\$ 95,000	\$ 93,000
2	Agricultural Advancement Consortium	\$110,000	\$107,000

3 **SECTION 14.15.(b)** Funds allocated in subsection (a) of this section for
4 community development grants shall support development projects and activities within the
5 State's minority communities. Any new or previously funded community development
6 corporation, as that term is defined in subsection (c) of this section, is eligible to apply for
7 community development grant funds. However, no community development grant funds shall
8 be released to a community development corporation unless the corporation can demonstrate
9 that there are no outstanding or proposed assessments or other collection actions against the
10 corporation for any State or federal taxes, including related penalties, interest, and fees.

11 **SECTION 14.15.(c)** For purposes of this section, the term "community
12 development corporation" means a nonprofit corporation:

- 13 (1) Chartered pursuant to Chapter 55A of the General Statutes;
- 14 (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of
15 1986;
- 16 (3) Whose primary mission is to develop and improve low-income communities
17 and neighborhoods through economic and related development;
- 18 (4) Whose activities and decisions are initiated, managed, and controlled by the
19 constituents of those local communities; and
- 20 (5) Whose primary function is to act as deal maker and packager of projects and
21 activities that will increase their constituencies' opportunities to become
22 owners, managers, and producers of small businesses, affordable housing,
23 and jobs designed to produce positive cash flow and curb blight in the
24 targeted community.

25 **SECTION 14.15.(d)** The Rural Center shall provide a report containing detailed
26 budget, personnel, and salary information to the Office of State Budget and Management in the
27 same manner as State departments and agencies in preparation for biennium budget requests.

28 **SECTION 14.15.(e)** By September 1 of each year, and more frequently as
29 requested, the Rural Center shall report to the Joint Legislative Commission on Governmental
30 Operations and the Fiscal Research Division on prior State fiscal year program activities,
31 objectives, and accomplishments and prior State fiscal year itemized expenditures and fund
32 sources.";

33
34 and on page 225, line 49 by rewriting the line to read:

35 **"SECTION 21.1.(b)** The percentage rate to be used in calculating the insurance
36 regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2010 calendar year.

37 **SECTION 21.1.(c)** This section is effective when it becomes law.";

38
39 and on page 195, line 22 by rewriting the line to read:

40 **"INCREASE FINES FOR WAIVABLE OFFENSES";**

41
42 ~~and on page 195, lines 27 and 32 by deleting the phrase "G.S. 7A-372(2)" and substituting the~~
43 ~~phrase "G.S. 7A-273(2).";~~

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 202

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S202-ASVxf-21 [v.6]

Page 43 of 43

1
2 and by adjusting the appropriate totals accordingly.
3
4

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 64-52 REFAILED TABLED _____

FILE CHANGE

JUN 11 2009 Ruled material
Aminie Weeks

ADOPTED