



# STATE OF NORTH CAROLINA

## SPECIAL REVIEW

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**RALEIGH, NORTH CAROLINA**

**FEBRUARY 2006**

**OFFICE OF THE STATE AUDITOR**

**LESLIE W. MERRITT, JR., CPA, CFP**

**STATE AUDITOR**

**SPECIAL REVIEW**

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**RALEIGH, NORTH CAROLINA**

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Leslie W. Merritt, Jr., CPA, CFP  
State Auditor

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**AUDITOR'S TRANSMITTAL**

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The Honorable Michael F. Easley, Governor  
The General Assembly of North Carolina  
Mr. Lyndo Tippett, Secretary, Department of Transportation

Pursuant to North Carolina General Statute §147-64.6(c)(16), we have completed a special review of procurement issues involving employees of the Department of Transportation. The results of the review, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with North Carolina General Statute §147-64.6(c)(12) which requires the State Auditor to provide written notice of apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee.

*Leslie W. Merritt, Jr.*

Leslie W. Merritt, Jr., CPA, CFP  
State Auditor

February 20, 2006

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## INTRODUCTION

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The Office of the State Auditor received information last year concerning an out-of-state business named Stone Cold Chemicals, Inc. (Stone Cold). Stone Cold was a telemarketing business that sold industrial chemicals and cleaning products. Stone Cold marketed its products at inflated prices and provided gifts to purchasing agents in return for placing orders. The gifts were referred to as “premiums” on internal sales reports and ranged in value from eight to ten percent of each sale.

Stone Cold maintained offices in Georgia and Florida. In January 2003, investigators from the Georgia Bureau of Investigation and the Walton County (Georgia) Sheriff’s Office closed and searched Stone Cold’s Georgia office. In March 2003, investigators from the Florida Department of Law Enforcement closed and searched Stone Cold’s Florida office. Investigators seized all documents, records, and computers from both offices as evidence for criminal prosecution. Several Stone Cold employees were prosecuted for criminal violations in Florida and Georgia.

The records seized from Stone Cold’s offices indicated that employees of the North Carolina Department of Transportation (DOT) authorized purchases from Stone Cold and received gifts or “premiums” for these purchases. We have completed a special review of these transactions and this report presents the results of that review. The review was conducted pursuant to G.S. 147-64.6(c)(16) rather than a financial statement audit. DOT is subject to financial audit procedures performed during the annual audit of the State’s Comprehensive Annual Financial Report.

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## **FINDINGS AND RECOMMENDATIONS**

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### **1. THE TRANSPORTATION SUPERVISOR III FOR DIVISION 10 DISTRICT 3 BRIDGE MAINTENANCE AUTHORIZED PURCHASES AT EXCESSIVE PRICES AND ACCEPTED GIFTS IN VIOLATION OF STATE LAW.**

Our review found that the Transportation Supervisor III (Supervisor) for Division 10 District 3 Bridge Maintenance authorized nine purchases from Stone Cold totaling \$2,734.37 from November 2001 through July 2003. According to Stone Cold's internal sales reports, the Supervisor received "premiums" valued at \$147.53 for these purchases. The premiums included one \$25 gift card to Bass Pro Shops, two gift cards to Edwin Watts Golf Shop, valued at \$25 and \$30, a dozen golf balls valued at \$43.99 and an order of flowers valued at \$23.54. These gifts were sent by mail to the Supervisor's home address.

We also found that the Supervisor purchased Stone Cold products at prices up to four times the comparable market prices for similar products. For the products the Supervisor acquired from Stone Cold, we compared the purchase prices to prices for similar products at local outlets. This comparison confirmed that DOT paid \$2,591.13 for products with a fair market value of \$540.35, an excess of \$2,050.78.

We also determined that Stone Cold added an extra \$10 to the shipping charge for each invoice. Actual shipping charges should have totaled \$73.24, but DOT paid \$143.24, an excess of \$70.

In our opinion the Supervisor's acceptance of these gifts was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation.

**§ 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.**

(a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation or member of the Board of Transportation, or to promise any officer or employee of the Department of Transportation or any member of the Board of Transportation to give anything of value to any other person with intent:

(1) To influence any official act of any officer or employee of the Department of Transportation or member of the Board of Transportation;

(2) To influence such member of the Board of Transportation, or any officer or employee of the Department of Transportation to commit or aid in committing, or collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) To induce a member of the Board of Transportation, or any officer or employee of the Department of Transportation to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Board of Transportation, or any officer or employee of the Department of Transportation, directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

(1) Being influenced in his performance of any official act;

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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(2) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) Being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a Class H felony which may include a fine of not more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of the thing of value whichever is greater. (1921, c. 2, s. 49; C.S., s. 3846(cc); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 55, s. 7; 1973, c. 507, s. 6; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10, 10.1; 1979, c. 298, ss. 3, 4; 1993, c. 539, s. 1308; 1994, Ex. Sess., c. 24, s. 14(c).)

The Supervisor's acceptance of these gifts also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated.

**§ 133-32. Gifts and favors regulated.**

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

(1) Has a contract with a governmental agency; or

(2) Has performed under such a contract within the past year; or

(3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contract; or

(2) Awarding or administering public contracts; or

(3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

(1) Preparing plans, specifications, or estimates for public contracts; or

(2) Awarding or administering public contracts; or

(3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c).)



## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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The Supervisor said he could not remember providing his home address to Stone Cold's sales representative, yet acknowledged receiving gifts at his home address. He said he shared the golf balls with fellow employees.

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Supervisor's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

#### **2. THE OFFICE ASSISTANT IV FOR DIVISION 10 DISTRICT 2 MAINTENANCE AUTHORIZED PURCHASES AT EXCESSIVE PRICES AND ACCEPTED GIFTS IN VIOLATION OF STATE LAW.**

Our review found that the Office Assistant IV (Office Assistant) for Division 10 District 2 Maintenance authorized three purchases from Stone Cold totaling \$1,107.91 from May 2003 through September 2003. According to Stone Cold's internal sales reports, the Office Assistant received "premiums" valued at \$110 for these purchases. The premiums included three gift cards to Wal-Mart, ranging in value from \$25 to \$50. The gift cards were sent by mail to the Office Assistant's home address.

We also found that the Office Assistant purchased Stone Cold products at prices up to four times the comparable market prices for similar products. For the products the Office Assistant acquired from Stone Cold, we compared the purchase prices to prices for similar products at local outlets. This comparison confirmed that DOT paid \$1,047.24 for products with a fair market value of \$208.65, an excess of \$838.59.

We also determined that Stone Cold added an extra \$10 to the shipping charge for each invoice. Actual shipping charges should have totaled \$30.67, but DOT paid \$60.67, an excess of \$30.

In our opinion, the Office Assistant's acceptance of these gifts was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

The Office Assistant's acceptance of these gifts also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

The Office Assistant said she remembered receiving the gift cards at home by mail after providing the sales person from Stone Cold with her home address. She indicated she did not believe anything was wrong with her receipt of these gifts.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Office Assistant's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

### **3. THE FORMER DIVISION BITUMINOUS SUPERVISOR FOR DIVISION 10 AUTHORIZED PURCHASES AT EXCESSIVE PRICES AND ACCEPTED GIFTS IN VIOLATION OF STATE LAW.**

Our review found that the former Division Bituminous Supervisor (Supervisor) for Division 10 authorized seven purchases from Stone Cold totaling \$5,642.08 from July 2003 through September 2003. According to Stone Cold's internal sales reports, the former Supervisor received "premiums" for these purchases. The premiums included a Carolina Panthers football jersey of unknown value and a dozen golf balls valued at \$43.99 and were mailed to the former Supervisor's home address.

We also found that the former Supervisor purchased Stone Cold products at prices up to four times the comparable market prices for similar products. For the products the former Supervisor acquired from Stone Cold, we compared the purchase prices to prices for similar products at local outlets. This comparison confirmed that DOT paid \$5,382.96 for products with a fair market value of \$1,345.74, an excess of \$4,037.22.

We also determined that Stone Cold added an extra \$10 to the shipping charge for each invoice. Actual shipping charges should have totaled \$189.12, but DOT paid \$259.12 an excess of \$70.

In our opinion, the former Supervisor's acceptance of these gifts was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

The former Supervisor's acceptance of these gifts also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

The former Supervisor acknowledged receiving the football jersey and golf balls.

### **RECOMMENDATIONS**

DOT should take appropriate action to address the former Supervisor's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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### **4. THE TRANSPORTATION ENGINEER SUPERVISOR I FOR DIVISION 10 TRAFFIC SERVICES ADMINISTRATION AUTHORIZED A PURCHASE AT AN EXCESSIVE PRICE AND ACCEPTED A GIFT IN VIOLATION OF STATE LAW.**

Our review found that the Transportation Engineer Supervisor I (Supervisor) for the Division 10 Traffic Services Administration authorized a purchase from Stone Cold totaling \$622.34 in November 2001. According to Stone Cold's internal sales reports, the Supervisor received a "premium" valued at \$50 for this purchase. The premium was a \$50 gift card to Wal-Mart and was sent by mail to the Supervisor's work address.

We also found that the Supervisor purchased the Stone Cold product at a price up to four times the comparable market price for a similar product. For the product the Supervisor acquired from Stone Cold, we compared the purchase price to the price for a similar product at local outlets. This comparison confirmed that DOT paid \$599.28 for a product with a fair market value of \$127.68, an excess of \$471.60.

We also determined that Stone Cold added an extra \$10 to the shipping charge for this invoice. Actual shipping charges should have totaled \$13.06, but DOT paid \$23.06, an excess of \$10.

In our opinion the Supervisor's acceptance of this gift was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

The Supervisor's acceptance of this gift also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

The Supervisor said he remembered this purchase from Stone Cold but did not remember receiving a Wal-Mart gift card.

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Supervisor's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

### **5. THE TRANSPORTATION EQUIPMENT SUPERVISOR FOR THE DIVISION 3 EQUIPMENT SHOP AUTHORIZED A PURCHASE AT AN EXCESSIVE PRICE AND ACCEPTED GIFTS IN VIOLATION OF STATE LAW.**

Our review found that the Transportation Equipment Supervisor (Supervisor) for the Division 3 Equipment Shop authorized a purchase of deicer from Stone Cold for \$281.06 in November 2001. According to Stone Cold's internal sales reports, the Supervisor received "premiums" valued at \$20 for this purchase. The premiums included gift cards to Victoria's Secret and Dillard's Department store. The gift cards were valued at \$10 each and were sent by mail to the Equipment Supervisor's home address.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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We also found that the Supervisor purchased the deicing product at up to four times the comparable market price for a similar product. For the product the Supervisor acquired from Stone Cold, we compared the purchase price to the price for a similar product at local outlets. This comparison confirmed that DOT paid \$261.12 for products with a fair market value of \$63.84, an excess of \$197.28.

We also determined that Stone Cold added an extra \$10 to the shipping charges for each invoice. Actual shipping charges should have totaled \$9.94, but DOT paid 19.94, an excess of \$10.

In our opinion, the Supervisor's acceptance of these gifts was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

The Supervisor's acceptance of these gifts also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

The Supervisor said he remembered getting the Victoria's Secret gift card in the mail at work and took it home to his wife. He said he did not remember getting the Dillard's gift card or what he did with it if he did receive it. He said that he told the Stone Cold sales person not to send him anything. He indicated Stone Cold's sales representatives were very persistent and tried not to take no for an answer. He said he is now aware that most of these types of products are available on state contract.

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Supervisor's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

#### **6. THE INFORMATION PROCESSING TECHNICIAN FOR THE DIVISION 3 EQUIPMENT SHOP AUTHORIZED A PURCHASE AT AN EXCESSIVE PRICE AND ACCEPTED A GIFT IN VIOLATION OF STATE LAW.**

Our review found that the Information Processing Technician (Technician) for the Division 3 Equipment Shop Equipment authorized the purchase of a cleaning product from Stone Cold for \$195.39 in October 2002. According to Stone Cold's internal sales reports, the Technician received a "premium" valued at \$17.99 for this purchase. The premium was a t-shirt and was sent to the Technician's home address.

We also found that the Technician purchased the cleaning product at a price nearly six times the comparable market price for a similar product. For the product the Technician acquired from Stone Cold, we compared the purchase price to the price for a similar product at local outlets. This comparison confirmed that DOT paid \$174.96 for a product with a fair market value of \$29.42, an excess of \$145.54.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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We also determined that Stone Cold added an extra \$10 to the shipping charges for the invoice. Actual shipping charges should have totaled \$10.43, but DOT paid \$20.43, an excess of \$10.

In our opinion the Technician's acceptance of this gift was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

The Technician's acceptance of this gift also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

Although the Technician said she remembered making a purchase from Stone Cold and Stone Cold's sales representative offering her items to induce her to purchase from them, she did not remember receiving the t-shirt.

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Technician's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

#### **7. THE OFFICE ASSISTANT IV FOR DIVISION 12 MAINTENANCE AUTHORIZED PURCHASES AT EXCESSIVE PRICES AND ACCEPTED GIFTS IN VIOLATION OF STATE LAW.**

Our review found that the Office Assistant IV (Office Assistant) for Division 12 Maintenance authorized two purchases from Stone Cold totaling \$894.30 from November 2001 through December 2001. According to Stone Cold's internal sales reports, the Office Assistant received "premiums" valued at \$80 for these purchases. The premiums included gifts cards to J.C. Penney and Bath and Body. The gift cards ranged in value from \$30 to \$50 and were sent by mail to the Office Assistant's home address.

We also found that the Office Assistant purchased these products at prices up to four times the comparable market prices for similar products. For the products the Office Assistant acquired from Stone Cold, we compared the purchase prices to prices for similar products at local outlets. This comparison confirmed that DOT paid \$850.44 for products with a fair market value of \$209.68, an excess of \$640.76.

We also determined that Stone Cold added an extra \$10 to the shipping charge for each invoice. Actual shipping charges should have totaled \$23.86, but DOT paid \$43.86, an excess of \$20.

In our opinion, the Office Assistant's acceptance of these gifts was a violation of North Carolina General Statute § 136-13, Malfeasance of Officers and Employees of Department of Transportation (See Finding 1).

## **FINDINGS AND RECOMMENDATIONS (CONCLUDED)**

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The Office Assistant's acceptance of these gifts also appears to be a violation of North Carolina General Statute § 133-32, Gifts and Favors Regulated (See Finding 1).

The Office Assistant said she did not remember the sales person offering to send her anything for making these purchases, providing her home address to the sales representative, or receiving gifts at her home.

### **RECOMMENDATIONS**

DOT should take appropriate disciplinary action to address the Office Assistant's improper conduct. In addition, DOT management should provide and explain applicable statutes and policies governing the receipt of gifts and favors from vendors to all employees with purchasing responsibilities. Further, DOT management should maintain a signed acknowledgement for each employee that receives this training.

# RESPONSE FROM DEPARTMENT OF TRANSPORTATION



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

LYNDO TIPPETT  
SECRETARY

February 15, 2006

Mr. Leslie W. Merritt, Jr., CPA, CFP  
Office of the Secretary  
Two South Salisbury Street  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Dear Mr. Merritt:

Thank you for your letter regarding procurement issues involving seven employees of the North Carolina Department of Transportation and Stone Cold Chemical, Inc.

My staff and I have completed our review of your confidential draft report. We concur with the recommendations made for all incidents. Appropriate disciplinary action will be taken in each case. In addition, we are initiating tighter management control on purchasing, which will include training regarding purchasing procedures, review of general statutes regarding acceptance of gifts and favors, as well as documenting the attendance and content of this training.

I appreciate the work of your Department in preparing this confidential draft and can assure you that appropriate actions will be taken.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyndo Tippett".

Lyndo Tippett

LT:br

cc: Len Sanderson, P.E., State Highway Administrator  
W. S. Varnedoe, P.E., Chief Engineer – Operations  
W. F. Rosser, P.E., Director of Field Operations  
Herb Henderson, Director of Human Resources  
Donnie Thorne, Director of Purchasing

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## **DISTRIBUTION OF REPORT**

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In accordance with General Statutes 147-64.5 and 147-64.6(c)(14), copies of this report have been distributed to the public officials listed below. Additional copies are provided to other legislators, state officials, the press, and the general public upon request.

### **EXECUTIVE BRANCH**

The Honorable Michael F. Easley	Governor of North Carolina
The Honorable Beverly M. Perdue	Lieutenant Governor of North Carolina
The Honorable Richard H. Moore	State Treasurer
The Honorable Roy A. Cooper, III	Attorney General
Mr. David T. McCoy	State Budget Officer
Mr. Robert L. Powell	State Controller

### **LEGISLATIVE BRANCH**

Appointees to the Joint Legislative Commission on Governmental Operations

Senator Marc Basnight	Senate President Pro Tem
Representative James B. Black	Speaker of the NC House of Representatives
Members of the Local Legislative Delegation	NC House and Senate
Mr. James D. Johnson	Director, Fiscal Research Division

February 20, 2006

## ORDERING INFORMATION

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Copies of this report may be obtained by contacting the:

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