

GAVIGAN FRANK

Form 4

January 12, 2006

FORM 4
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Check this box
if no longer
subject to
Section 16.
Form 4 or
Form 5
obligations
may continue.
See Instruction
1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF
SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
30(h) of the Investment Company Act of 1940

OMB APPROVAL

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(Print or Type Responses)

1. Name and Address of Reporting Person *
GAVIGAN FRANK

2. Issuer Name **and** Ticker or Trading
Symbol
1ST STATE BANCORP INC
[FSBC]

5. Relationship of Reporting Person(s) to
Issuer

(Check all applicable)

(Last) (First) (Middle)
445 SOUTH MAIN STREET
(Street)

3. Date of Earliest Transaction
(Month/Day/Year)
12/30/2005

____ Director ____ 10% Owner
____X____ Officer (give title below) ____ Other (specify below)
Sr. V. P., 1st State Bank

BURLINGTON, NC 27215

4. If Amendment, Date Original
Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check
Applicable Line)
____X____ Form filed by One Reporting Person
____ Form filed by More than One Reporting
Person

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
Common Stock	12/30/2005		M	2,679 A (1)	4,269	D	
Common Stock	01/03/2006		D	4,269 D (2)	0	D	
Common Stock	01/03/2006		D	9,160 D (2)	0	I	By ESOP
Common Stock	01/03/2006		D	13,076 D (2)	0	I	By Profit Sharing Plan Trust
Common Stock	01/03/2006		D	356 D (2)	0	I	By Spouse

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Common Stock	01/03/2006	D	100	D	<u>(2)</u>	0	I	By spouse as trustee for minor child
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Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)			
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares
Phantom Stock Unit	<u>(3)</u>	12/30/2005		M		2,679		<u>(1)</u>	<u>(1)</u>	Common Stock	2,679
Stock Option (Right to Buy)	\$ 14.71	01/03/2006		D		11,250		06/06/2000	06/06/2010	Common Stock	11,250

Reporting Owners

Reporting Owner Name / Address	Relationships
	Director 10% Owner Officer Other
GAVIGAN FRANK 445 SOUTH MAIN STREET BURLINGTON, NC 27215	Sr. V. P., 1st State Bank

Signatures

By: James C. McGill,
Attorney-in-Fact 01/10/2006

__Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) Shares were distributed from the 1st State Bank Deferred Compensation Plan (the DCP Plan) to direct ownership upon the termination of the DCP Plan on December 30, 2005 pursuant to the Merger Agreement dated as of June 29, 2005 by and between Capital Bank Corporation and 1st State Bancorp, Inc. (the Merger Agreement).
- (2) Pursuant to the Merger Agreement, on the effective date of the merger of 1st State Bancorp, Inc. (the Issuer) with and into Capital Bank Corporation, these shares of Issuer common stock were converted into the right to receive, at the election of the Reporting Person but subject to the allocation procedures set forth in the Merger Agreement: (i) 2.434788 shares of Capital Bank Corporation common stock, rounded to the nearest whole share, for each share of Issuer common stock; (ii) \$37.15 in cash for each share of Issuer common stock; or (iii) 1.684457 shares of Capital Bank Corporation common stock, rounded to the nearest whole share, and \$11.4486 in cash for each share of Issuer common stock. The Reporting Person has until February 8, 2006 to elect the form of merger consideration he wishes to receive.
- (3) Each share of phantom stock was the economic equivalent of one share of 1st State Bancorp, Inc. common stock.
- (4) This option was cancelled in the merger in exchange for a cash payment representing the difference between \$37.15 per share and the exercise price of the option.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.